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FOURTH REPORT OF THE SELECT COMMITTEE ON THE OMBUDSMAN

1978

TABLED IN THE LEGISLATIVE ASSEMBLY BY
THE CHAIRMAN OF THE COMMITTEE
MICHAEL N. DAVISON, M.P.P.

2nd Session 31st Legislature

27 Elizabeth II

May 18, 1978

TO: THE HONOURABLE JOHN E. STOKES
Speaker of the Legislative Assembly of
the Province of Ontario

Sir,

We, the undersigned members of the Committee appointed by the Legislative Assembly of the Province of Ontario on Tuesday, July 12, 1977, have the honour to submit the attached fourth report.

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ON THE OMBUDSMAN

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I N D E X

	<u>Page</u>
INTRODUCTION	(I)
PART I - TRADITION	1
PART II - RELATIONSHIPS	10
PART III - ORGANIZATION AND OPERATION OF OMBUDSMAN'S OFFICE	42
PART IV - RULES FOR THE GUIDANCE OF THE OMBUDSMAN AND THE EXERCISE OF HIS FUNCTIONS	55
PART V - OMBUDSMAN'S "SANCTIONS"	59
PART VI - LOCAL GOVERNMENT	72
PART VII - BUDGET	83
APPENDIX "A" - COMMITTEE'S ATTENDANCES WITH PERSONS IN FOREIGN JURISDICTIONS	90
APPENDIX "B" - SUMMARY OF RECOMMENDATIONS	94

"God gave man the task of conducting an everlasting struggle for moral advancement, not only in his individual soul but also in his society. In this a meaningful role is assigned to us" - address by Dr. I.E. Nebenzahl, Commissioner for Complaints from the Public of Israel to the International Ombuds-men Conference, Edmonton, Canada, September 9, 1976.

INTRODUCTION

In Part III of the Third Report of the Select Committee on the Ombudsman (Continuing Function of the Select Committee on the Ombudsman) the Committee stated that:

"The concept of the Ombudsman as a part of the parliamentary system of government in Ontario is barely two years old. As such, it continues to be the subject matter of much discussion, interpretation, criticism, and commendation. Additionally, because of the novelty of this concept in the context of our system of government, it is a matter of continuing evolution and development.

Because of the newness of the office and the policies adopted by the incumbent Ombudsman with respect to his functions, it has been both a source of confusion and misunderstanding. The Ombudsman has himself sought the advice and assistance of the Committee in matters wherein he and his staff have had no previous insight and experience. For all of these reasons, the Committee perceives its role, among others, on a continuing basis, to interpret for all concerned, the concept of the Ombudsman in the context of our system of government and to help all persons concerned understand, appreciate and participate in the operation, organization and development of the office.

To fully and properly carry out this role, this Committee perceives a need for its continuing education in matters relating to the concept of Ombudsmen, both practical and theoretical. With this expanded knowledge and experience the Committee will best be able to serve the Ombudsman, the members of the Legislative Assembly and the people of the Province of Ontario."

Further, in Part I of the Committee's Third Report at page 14 commenting upon the Ombudsman's recommendation that his jurisdiction be expanded to municipal governments, the Committee stated that:

"The Committee recognizes this recommendation as having implications respecting the concept of Ombudsman in the Province of Ontario. It is of the opinion, if the Ombudsman's jurisdiction were expanded in this area, a profound effect on the Ombudsman's office as presently constituted would result

Accordingly, the Committee defers any formal comments and recommendations to the Legislature on this matter until such time as studies are completed by others referable to the operation and organization of the Ombudsman's office and until the Committee has had an opportunity of studying in person, other jurisdictions, who have had, for a number of years, the experience of processing complaints in this category."

Further, Recommendation #41 of the Third Report of the Select Committee stated that:

"The Legislature pass an Order of Reference amending the Order of Reference of the Select Committee to provide that it review from time to time the estimates of the Ombudsman as they become available, to report thereon to the Legislature, and to make such recommendations as the Committee deems appropriate."

It is against the background of all of these issues that the Committee visited the countries of Denmark, Sweden, Israel, England and Scotland during January 1978. These countries were chosen by the Committee as being a representative sample of Ombudsman jurisdictions in the world from which the

Committee could profit by a study of the development and experience of the respective Ombudsman institutions and those responsible for a review of the operation of those institutions.

The Committee travelled from January 6, 1978 through and including January 28, 1978. During that time, it held 17 days of meetings with Ombudsmen and their staff, elected members of the Parliaments of the respective countries from all represented parties, and members of the public service. In all, the Committee met with more than 60 persons with official capacity during that period and often spoke to members of the public. Schedule "A" to this Report contains a list of persons with whom the Committee conferred. The large number of individuals and the quality of informality, which often attended the Committee's relations with executive personnel, legislators and the public in these countries were invaluable ingredients in assessing and coming to objective conclusions on the issues in this Report.

The Committee acquired a fundamental knowledge of the organization and operation of the Ombudsman offices in the five countries. It also acquired a knowledge and understanding of the relationship that exists between an Ombudsman and the Parliament which appointed him.

The meetings accomplished one additional thing equally as important. They started a dialogue between the Committee and the incumbent Ombudsmen and, the members of parliaments of countries visited. This dialogue will continue so that those participating therein will be able to learn from the others' continuing development and experience.

The word "Ombudsman" is quite common in the Swedish language. Its literal meaning is representative. The actual title of the persons in Sweden performing functions similar to those of the Ontario Ombudsman is "Justitieombudsman", or representative for justice. In Israel the appropriate title is

Commissioner for Complaints from the Public. In England it is the Parliamentary Commissioner for Administration and Health Services Commissioner. In England and in Scotland at the local government level it is Commissioner for Local Administration.

The questions: "what is an Ombudsman?" and "what does an Ombudsman do?" cannot be answered without placing the person in the context of a system of government and a particular culture and society. Characteristics of an Ombudsman and the office are in part a product of the country lived in, the culture enjoyed, the system of government that has created the Ombudsman and most importantly the expectations that all have of the person. What an Ombudsman does and what an Ombudsman is, depends on what the particular country, culture and system of government want and need the institution to do.

While the role of an Ombudsman to the traditions, history and civilization of any particular country are curiously endemic, they all share a common objective; ultimately to serve the public; to hear complaints respecting the operation of the public service; and where appropriate, to take such steps as are available to them to remedy the consequences of a particular act or omission of that public service.

To reach that objective, it is vitally important for every segment of society touched by the Ombudsman's functions; the public, the public service, the government and Parliament to have respect for and support for the Ombudsman's actions and functions. While it tends to be possibly the most personalized public office; still without clear, unequivocal definitions and interpretations of Ombudsman's functions, relationships, and the objectives of the office, the Ombudsman cannot and will not be effective, nor will Parliament and the public service be able to develop the relationships and respect so necessary to assist the Ombudsman in the successful operation of that office. The Committee is persuaded

after its study of the foreign jurisdictions that definitions and interpretations in the areas of functions and relationships are at best vague in Ontario. A clearer statement of those definitions and interpretations is now overdue.

Apart from the need for a clarity of relationship, and probably more important than this, the Committee learned that a deep personal respect is necessary to the functioning of the office: a sense, which has not as yet been developed in Ontario, of the dignity and integrity of this office, which can only be engendered and maintained by a mutuality of understanding on the part of the legislature and the government generally towards the office and person of the Ombudsman, whoever that person may be from time to time, and by the Ombudsman towards the elected members and all others touched by his function.

The Ombudsman Act was passed by the Legislature in 1975. The Bill was given a thorough debate clause by clause insofar as the practical implications of various key sections were concerned. However, there was never, at that time, a clear statement from the Legislature to indicate what role the Ombudsman should play within the system of Government in Ontario or in what context the Ombudsman was expected to perform that role. This is not meant as a criticism but a statement of fact. At the time the Act was introduced there was a lack of understanding of what an Ombudsman was, how an Ombudsman should function in Ontario and significantly, what the implications would be of an Ombudsman functioning in Ontario. Other countries (Israel and England) preceded the creation of the office by a Parliamentary study thoroughly canvassing the significant issues, namely, the necessity of an office and the most appropriate concept of an Ombudsman within the particular parliamentary system.

When the Ombudsman was sworn into office in October 1975, he was left to his own resources to create, organize and structure his office. More

importantly he was left to his own resources to interpret the obligations imposed upon him by statute and thereafter to implement those obligations in the performance of his functions. When the performance of the Ombudsman and his office was subsequently scrutinized by the public, the Legislature and this Committee, through various Ombudsman reports and other actions of the office coming to the attention of the Legislature, he and his office have been criticized whenever a matter fell short of or exceeded expectations, or concepts persons had of the office. The problem has been however, that the expectations and concepts which have measured the office's performance are as individual as those articulating them. There are no generally accepted, consistent Legislative definitions and interpretations of his functions under the Ombudsman Act or the relationships that are necessary to perform those functions. The Committee believes, to the extent it is possible, the time is overdue for the Legislature to formulate these definitions and interpretations.

The Ombudsman has conceded that some of the criticism of and comment on the Ombudsman and his office was justified. However, that is not the point. Without affording him the benefit of those definitions, interpretations, objectives and some explicit guidance, it is unfair to expect a particular standard of performance of the Ombudsman; to demand that the Ombudsman stay within the bounds of his jurisdiction; and to ask that the Ombudsman develop appropriate relationships within those segments of society touched by his function and at the same time to criticize him and his office for failure to adhere to those expectations. Unless and until the Legislature, with the assistance of this Committee begins to formulate these matters, the Ombudsman will continue to perform in a shadow of doubt, and the public will ultimately suffer.

Nor do we hold that the Ombudsman can be absolved from responsibility for the situation which has developed and which prevails with respect to the comments and reactions directed to him and his office. Our perception to date is that there exists a certain lack of understanding as to the role, functions and sensibilities of members of the Assembly, both collectively and individually. The adversarial approach to issues involving the Assembly's authority over the Ombudsman and the interpretation of the various parts of the Ombudsman Act has also contributed to some of the comments and criticisms. This must not continue.

This report, under the topical headings referenced earlier, surveys for the benefit of the members of the Legislative Assembly how things are done in the five countries visited and more importantly, why they are done. This survey is the beginning by the Committee of the process of formulating the definitions and interpretations discussed above. The Committee has made recommendations to the Assembly, where it is of the opinion the formulation process would be assisted.

This report does not pretend to be the dictionary for the definitions considered necessary nor the exclusive source for the much needed interpretations. Nor is it a panacea for all the problems confronting the Ombudsman and the Legislative Assembly. It is intended as the starting point to the creation of those definitions and interpretations whereby the Ombudsman can function with certainty and with clear understanding of the expectations required by the Assembly of him and his office. He must be placed in a position where he is not constantly looking over his shoulder, concerned with the Committee's, the Legislature's and the government's reaction to a particular course of conduct. The sooner these goals are set upon, the sooner the ultimate beneficiary (the

people of the Province of Ontario) which the Ombudsman has pledged himself to serve, will benefit.

We do not see these proposed rules, definitions or interpretations as legislative restrictions or impositions on the Ombudsman, but as a means to make more plastic the ongoing good relationship between all parties so necessary to the harmonious, as well as efficient, operation of this valued office. In the spirit of this report, which is hopefully intelligently conciliatory and designed to unify and not divide, and to enhance and not to diminish, the inter-dependent autonomy of the office in relation to the assembly and the Government, these governing principles in their formulation should be arrived at in an open and free consultation with the Ombudsman.

As possibly with no other public office, however independent by statute, the relationship between the Ombudsman and Parliament is perforce and necessarily trusting. It is a unique and delicate flower in any democratic system; and its preservation and growth requires almost infinite and endless care.

PART I
TRADITION

Tradition in the Shorter Oxford English Dictionary is defined as:

"the act of transmitting or handing down or fact of being handed down, from one to another, or from generation to generation; transmission of statement, beliefs, rules, customs, or the like, especially by word of mouth, or by practice without writing".

The tradition of an Ombudsman's office is not confined to that which has been "handed down" by predecessors of the office. It has also come from Parliaments who have created them. Regardless of its source, it has contributed to a definition and interpretation of the concept of Ombudsman. It has also influenced the respect held generally for the man and the office; the support by Parliament for the actions of the Ombudsman; and the effectiveness of the Ombudsman in the performance of his functions.

The local government jurisdictions in England and Scotland, being less than three years old, are obviously not within this category. However, their legislation parallels so closely that of the Parliamentary Commissioner that the comments below referable to that office apply in some respects, to them as well.

All Ombudsmen perform their duties, and oversee the operation of their office, with a clear understanding that they must always in the performance of their respective functions retain the confidence of their Parliament or the local authorities, as the case may be. They accept a long standing principle of Parliament that where confidence in the Ombudsman as a person has been lost, immediate dismissal or resignation follows. The desire to promote and maintain public confidence in the office outweighs personal considerations.

The incumbent Ombudsmen in Denmark, England and Scotland, the latter two countries at the local government level, have taken a very tentative, cautious and thorough approach to the performance of their functions. They feel very strongly that respect for the office is earned by a high standard of performance above all else. In that way, they are "drafting" traditions of their respective offices for their successors.

All incumbent Ombudsmen and where appropriate, their predecessors, have avoided any antagonism between themselves and the Legislature. This does not appear to have been at the expense of effectiveness. At the state level, all Committees with a parallel function to this Committee have been fully supportive, by word and by deed, of the Ombudsman.

The high level of performance by the Ombudsmen and their staff is also a product of the tradition of the office. Procedures tried and improved upon throughout the years have, of course, resulted in efficient operations. Also, because Ombudsmen are aware of the high standard of performance demanded by Parliaments historically, they have recruited a staff with the ability to meet those standards.

The office of Ombudsman, created in Sweden in 1809, has to some degree been the model of Ombudsmanship in every country wherein the office has subsequently been created. Being the cradle of the office of the Ombudsman, an insight into the circumstances surrounding its creation should enable Ontario to understand the context of the office.

In 1713 the exiled King Charles XII of Sweden caused an office to be created within Sweden ultimately known as the Chancellor of Justice, to deal with unrest and disorder in the country. That person was responsible to ensure that among other things civil servants fulfilled their obligations imposed upon them by statute.

The Chancellor's office retained that authority until 1809 when King Gustav IV Adolf of Sweden, who had caused the authority of the Chancellor's office to be greatly abused, was dethroned. Thereafter, Parliament was convened for the first time in many years and almost immediately set upon drafting a new constitution based on the principle of a balance of power between the King and Parliament. The new constitution provided for a Chancellor of Justice appointed by the King and the provision for a Justitieombudsman elected by Parliament to supervise, in his capacity as representative of the Swedish Parliament, the observance of laws and statutes by all public officials and judges, which group included at that time, the military.

This office was acknowledged as a fundamental and critical factor in keeping the balance of power. It was the vehicle of Parliament to keep the power and the influence of the King and his public servants in check. It is significant that the first Ombudsman (Baron Mannerheim) had been a politician and Chairman of the Parliamentary Committee that drafted the constitution. He was considered the leader of the political party that held power in Sweden at the time.

The original jurisdiction of the Ombudsman consisted primarily of that of special prosecutor. He could institute legal proceedings when he determined that a public servant had committed a breach of his official duty. In the 19th Century there were numerous prosecutions of the public service by the Ombudsman. His authority was seen as direct control of the conduct of the public service.

Since then, Ombudsmen in Sweden have shown great resourcefulness in their ability to adjust and modify their function to coincide with the prevailing sentiment of Government, Parliament and the courts respecting the nature and

extent of the authority that should be available to the Ombudsmen at any particular time. For example, the courts in Sweden gradually formulated the principle that it was unreasonable to classify as criminal, actions of a civil servant which do not measure up to the standards required by law. Convictions were gradually confined only to the most extreme cases. The Ombudsmen knowing that their prosecutions would ultimately be unsuccessful developed the practice of admonishing the public service for improper conduct. This developed to the extent that in 1975 the Legislative amendments virtually removed the power of prosecution and substituted therefor Ombudsmen decisions respecting conduct in issue, which may, if the circumstances warrant, include admonitions. Although the new legislation retains authority to prosecute in limited circumstances, it is generally acknowledged that it has been effectively withdrawn by Parliament. The practical alternative to prosecutions adopted by the Ombudsmen (decisions and admonitions) has now become the principal activity of the office and is the basis of their present authority.

There appears also to have been a steady development throughout the last quarter-century wherein procedures have been enacted within the public service and other agencies, boards and institutions, to supervise and maintain the standard of performance of its members. The jurisdiction of the Ombudsmen has been thus diminished by alternatives. Consequently this has diminished the role and the impact of the office as it affects the public service.

Whereas the original function of the Ombudsman in Sweden was to control the behaviour of the public service by means of prosecution, today that relationship has changed by convention and by legislative amendment to a supervision of the relationship between public administration and the public to help maintain a minimum standard of efficiency in the operation of the public

service. While previously the Ombudsman's impact upon all was directly controlled by his office as prosecutor it is now substantially dependent upon others (the press, Swedish Parliament, and the Swedish Constitutional Committee). However, the office still enjoys a respect of the public service and the public which is generated more from the historical perspective of its authority, than the actual current authority.

The classic or historical perspective of the Ombudsman as a prosecutor for wrong doings is not applicable to help define the role of the Ombudsman in Ontario. That the Ombudsman in Sweden historically was the representative of Parliament to keep the power of the Executive (King) in check is also not applicable. If the Ombudsman in Ontario were given that authority he would, of necessity, be treading in the political arena. That, in this Committee's opinion, is the function of the members of the Legislative Assembly collectively and individually. The Ombudsman as prosecutor, one charged with the responsibility of supervising the public service to ensure that it properly fulfills its obligations in law, connotes an active pursuit of wrong doings. It is significant that since the change in the Swedish legislation in 1975, the Swedish Ombudsmen (four of them) have become less active in their pursuit of wrong doings by means of inspection of public institutions. Rather, now their time is substantially taken with processing complaints received from the public. In other words, the reduction of the control factor from the Ombudsmen's authority, reduced substantially the concept of actively monitoring the performance of the public service.

In Israel the incumbent Ombudsman, before the creation of the office in 1971, was the State Comptroller. He has since 1971 performed both functions for the State of Israel.

The State Comptroller in Israel is one of the most influential and important public officers in the country. He is charged with the responsibility on behalf of the Knesset to review and pass judgment on the legality, regularity, propriety and moral integrity of all operations of government and agencies or institutions which are either controlled by government or in which government participates. He is in many ways the conscience of the government. The respect that is held for him in that office by all concerned is very high. His influence over government by virtue of that office is enormous.

The office of State Comptroller is considered of equal if not slightly higher stature than that of a Ministry of Government.

This is, of course, due to a number of factors:

- (i) the critical function the State Comptroller performs for the State of Israel;
- (ii) the extraordinary qualities of Dr. Nebenzahl and the high level of performance of the office.

In 1971 all of those factors were brought to and automatically associated with the office of the Commissioner for Complaints from the Public. Anyone studying the Commissioner's office without appreciating the nature and extent of the influence on it by the State Comptroller's office, would come away with a distorted view of what an "Ombudsman's function" is in Israel. Because in the public perception, it is virtually impossible to separate the effectiveness of the functions between the State Comptroller and the Commissioner, one must be very cautious in comparing that office with Ombudsmen offices in other countries.

Prior to 1971, the office of State Comptroller had functioned for more than ten years. In 1971 it had a staff of 450 persons. Their knowledge,

insight and experience respecting public service was automatically brought to the office of Commissioner upon its creation in 1971. The office had an immediate identity with a highly regarded public official which automatically established credibility and respect in the eyes of the public service and in the public. In addition, the State Comptroller had at least six years prior to 1971 unofficially and informally performed "Ombudsman" functions for members of the public. In 1970, the year before the creation of the office, the number of complaints processed this way was approximately 4,500. There was therefore, no significant learning process or start-up period required of the office which could have adversely affected its performance for any length of time.

In Denmark a Constitutional Commission appointed in 1946, recommended in 1953 that the office of an Ombudsman be introduced into the Danish system of government, on the Swedish model. Accordingly, when the present Constitution of Denmark was passed on June 5, 1953, it provided for the appointment by the Danish Parliament (Folketing) of an Ombudsman.

The country's first Ombudsman carried out his functions with extreme caution. He recognized the institution was new to the public, the public service and Parliament and that its acceptance and effectiveness would depend upon confidence and respect earned and not created. Accordingly, whenever he criticized the performance of a civil servant, he did so in very diplomatic terms and with very palatable recommendations.

The incumbent Ombudsman is more "courageous" than his predecessor with respect to his opinions of the conduct of public officials. However, the caution and sensitivity for the need to maintain and expand confidence and respect for the office still exists and influences his activities and those of his staff.

In general, all Ombudsmen at the state level function with a clear understanding from their respective Parliaments that their responsibilities are confined to administrative issues. Where any issue contains political elements or becomes a matter of discussion in Parliament, it is abandoned by the Ombudsman, to be taken up at some time in the future if and only if it is possible to deal with the administrative issue exclusively.

The Acts of Denmark and Sweden provide for Ombudsmen functions which include civil and military conduct and which are wider in scope and more far-reaching in consequences than in Ontario. That notwithstanding, the activities of the incumbent Ombudsmen are such that only a fraction of the potential activities are being undertaken. This may be explained in part by the persons in office. It also may be explained by the nature and extent of the fiscal restraints imposed upon the office, both internally and externally. However, in both countries there is a very strong sense that the Parliament has placed informal but very real constraints upon the Ombudsmen's latitude. The desire to maintain the confidence of Parliament pervades every aspect of the Ombudsmen functions in both countries and in the Committee's opinion is a most significant factor in defining the concept and role of the Ombudsman.

In England the Parliamentary Commissioner was created against the background of a need for an office which would be exclusively concerned with the investigation of acts of the public service and the traditional role of a member of Parliament as a "mini-Ombudsman" for his constituents in respect of the same acts of the public service.

By linking the Commissioner's ability to investigate a complaint with the decision of a member to refer that complaint to him, Parliament created an institution that in the words of the incumbent Commissioner was:

"resting on the principle that Parliament is the protector of the individual against the Executive and that the Ombudsman is the weapon in Parliament's armory for this purpose."

Thus an identity of the "Ombudsman" with Parliament was immediately established which is absent in Ontario. This identity fostered a relationship based on mutual co-operation and mutual goals which has had a profound influence on the office's effectiveness and level of performance.

In Ontario we do not have the benefit of many years of experience of nor fundamental principles developed over those years emanating from the Ombudsmen's office. We do not have a situation as in Israel wherein the office of Ombudsman is an extension of and derives the direct benefit from one of the most influential public offices in the country, that of State Comptroller. We do, however, have the role of the member of Parliament in the British tradition. We also have the reaction of the members, individually and collectively to the activities of the Ombudsman for almost three years. That reaction has been mixed. It has yet to cause or contribute to any concept of what the Ombudsman should be in Ontario or how he should relate to the Assembly.

On page 32 of the Committee's Third Report, it stated that:

". the Committee is of the opinion that it is now necessary, for the guidance of the Ombudsman and his staff in the exercise of his functions, for it to begin the formulation of certain general rules.

The Committee will not, in this Report, be presenting to the Legislature general rules for formal implementation. Rather, it intends to review certain matters of particular concern wherein it perceives that the

formulation of general rules is necessary. The purpose of this is two-fold. Firstly, to give the Ombudsman an opportunity to consider the Committee's comments and for him to provide whatever comments he thinks are appropriate to assist the Committee in its deliberations. Secondly, to inform each member of the Legislature of the areas wherein the Committee is considering general rules and to invite their comments."

The Committee is now of the opinion that any rules for the guidance of the Ombudsman in the exercise of his functions must also include rules which will articulate the concept of what the Ombudsman should be and which will promote a relationship that is based upon mutual respect and co-operation. The Committee intends to formulate these rules before it next reports to the Assembly. Before that time the Committee will invite comments of the members of the Legislature and the Ombudsman.

PART II
RELATIONSHIPS

An Ombudsman in any country touches almost every segment of society in the performance of his functions, including in many countries, a limited municipal jurisdiction. This is especially true where the Ombudsman operates at a state or federal level as in Denmark, Sweden, Israel and the United Kingdom. The way in which the Ombudsman interacts with these various segments is helpful to define the true context of the office within that country. No doubt the reasons explaining these relationships are due in part to the uniqueness of the society in which they occur. That notwithstanding, an examination of the individual relationships with Parliament, the relevant Committee of Parliament, the press, the public in general and the public service

will assist the members of the Legislature to formulate a clearer concept of the role of the Ombudsman in Ontario.

Before reviewing the relationships in detail, it is necessary to set out the individual functions and jurisdiction of each of the Ombudsmen.

(a) Denmark

The Ombudsman is charged with the duty to keep himself informed of errors of neglect in the performance of duties of ministers, civil servants, and all other persons in government service except members of the Judiciary and Chief Administrative Officers thereof and, in the sphere of local government, of errors of neglect of persons wherein recourse to a central government authority in respect of the performance of duties of the local government is provided for. The investigation of issues of errors of neglect may commence either upon receipt of a written complaint from any person if it is considered to contain sufficient grounds for investigation or on the Ombudsman's own initiative. Additionally, where the Ombudsman learns of any major mistakes or significant derelictions of duty on the part of the public service at both levels, he must so report with or without recommendations to the Danish Parliament or the local government council, as the case may be. As well, if any deficiencies in existing law or administrative regulations come to the Ombudsman's attention, he must also notify the Parliament or the local government council as the case may be.

(b) Sweden

The Swedish Ombudsmen (four) are charged with the duty to supervise the observance of laws and other statutes by those exercising public authority; to supervise the fulfillment of obligations pursuant to those laws and statutes; to ensure that courts of law and administrative authorities conduct proceedings objectively, impartially and protecting the fundamental rights and freedoms of

citizens affected; and to recommend any amendment to legislation considered by the Ombudsmen to be necessary. This duty as the representative of Parliament to monitor the actions of the civil service at both the state and local government level, is done independently of Parliament and without its interference within a predetermined set of directions which are modified from time to time by Parliament.

In both of the Scandinavian countries, the Ombudsmen retain some authority to direct or recommend disciplinary or criminal proceedings. Accordingly, they have potentially much greater powers of control than Ombudsmen in other countries. The emphasis of their functions differs from Ontario. Whereas in Ontario and other commonwealth jurisdictions an emphasis is placed on the Ombudsman remedying the particular injustice as a result of the act or omission, the emphasis of the Scandinavian countries, particularly Sweden, is to correct the act or omission which gave rise to the so-called injustice. There has been little emphasis placed upon obtaining a just result for the complainant. Rather, the Ombudsman has concerned himself with giving "advice" to the public service so as to avoid a recurrence of the particular situation. He has thus been creating a manual of conduct for the public service.

(c) Israel

The State Comptroller, with all of the resources available to him is also charged with the responsibility to investigate complaints from members of the public against persons employed by all ministries in government, all institutions of the state and all municipal governments including cities, local councils and rural councils wherein the particular act or omission complained of is directly injurious or directly withholds a benefit from the complainant or the person ultimately affected by the subject matter of the complaint and is

contrary to law or done without lawful authority or contrary to good administration or involving too inflexible an attitude or causing a flagrant injustice.

He may also investigate matters of this nature on his own motion or those which come to his attention while he or his office is performing the statutory functions of State Comptroller. In that regard, the presence of the office is regular and constant insofar as the public service is concerned. The perception that the public service has of the Commissioner would, in some ways, be similar to that of a public servant in Ontario who knew that an Ombudsman's investigation could result in consequence of the Provincial Auditor's investigation, recognizing that the authority and resources of the Provincial Auditor are not as extensive as that of the State Comptroller.

(d) United Kingdom

The Parliamentary Commissioner may investigate any action taken by or on behalf of a government department or to any other central authority to which the Act applies as set out in a schedule to the legislation which action was taken on the exercise of administrative functions of the government department or authority and where (1) a written complaint is made to a member of the House of Commons by a member of the public who claims to have sustained injustice in consequence of maladministration in connection with the action, and (2) that the complaint is referred to the Commissioner with the consent of the person making it by the member of the House of Commons with a request to conduct an investigation thereon.

The matters respecting which the Parliamentary Commissioner may involve himself are restricted solely to those complaints referred to him by members of the House of Commons. He is thus one step removed from the public.

(e) Local Commissioners (England, Wales and Scotland)

The function and jurisdiction of the local Commissioner is substantially parallel to that of the Parliamentary Commissioner in England. The local Commissioner may investigate a matter where a written complaint is made by or on behalf of a member of the public who claims to have sustained injustice in consequence of maladministration in connection with any action taken on behalf of a local authority to which the Act applies and which complaint is one that is made in writing to a member of the authority or of any other authority concerned specifying the action alleged to constitute maladministration, and (2) the complaint is referred to the local Commissioner with the consent of the person complaining, by a member of any authority concerned, with the request to investigate the complaint. There is a further requirement that before proceeding to investigate a complaint the local Commissioner shall satisfy himself that the complaint has been brought by or on behalf of the person aggrieved to the notice of the local authority to which it relates and that that authority has been afforded a reasonable opportunity to investigate and reply to the complaint. The local Commissioner may dispense with the requirements that the member of the local authority refer the complaint to the local Commissioner with a request to investigate but only if it appears that the member of the public has made such a request of the member and he has refused so to act. Having regard to the very tentative approach the Local Commissioners have adopted so far, it is not surprising that this authority has yet to be exercised by them.

(f) City of Jerusalem

The Ombudsman has the authority to investigate complaints from anyone respecting the conduct of the public service of the City or respecting a situation giving rise to the complaint which is within the control of one or more

of the departments within that public service provided the department in question previously has been made aware of the complaint and has had an opportunity of resolving it.

This jurisdiction is, in some respects, concurrent with that of the Commissioner's, although the Commissioner tends to deal with matters broader in scope than the Ombudsman for Jerusalem. The Ombudsman does not believe that two Ombudsmen should function within the City on somewhat of a competitive basis. In this respect he is hopeful an agreement can be reached with the Commissioner wherein the Ombudsman is the Commissioner's "representative" for complaints in the City.

RELATIONSHIP WITH PARLIAMENT OR LOCAL COUNCIL

(a) Denmark

The Danish Ombudsman is elected by the Danish Parliament after each general election. In recent years, general elections have been called on an average of every two years. As required by a statute he must formally communicate with Parliament by the end of September in each year through his annual report. The Annual Report contains a brief overview of his activities for the reporting period in question, a statistical analysis and explanation of the cases reviewed and processed within the year in question. Further it may contain any general comments or observations respecting the year's performance which the Ombudsman considers in the circumstances, appropriate. The largest portion of the report contains the text of certain reports issued by the Ombudsman in the year in question which the Ombudsman considers may be of general interest to Parliament and the public. The size of the report compares closely to those issued to date by the Ontario Ombudsman. The reporting relationship, however, is tenuous since the report is received by the Parliament's Justice Committee

which considers it and which once a year reports quite briefly to the Parliament recommending that Parliament "take notice of" it. There is virtually no debate on the issues arising out of the report.

The Parliament has enacted directives for the guidance of the Ombudsman in the performance of his function and the organization of his office. While there is no continuing process of review of these directives by Parliament, it would not hesitate to make any appropriate amendment or additions if the circumstance arose, to more precisely define the Ombudsman's authority and the context within which he performs that authority. Subject to these directives, he is independent of Parliament.

It is Parliament who has the ultimate authority to dismiss the Ombudsman if he ceases to enjoy its confidence. This authority combined with the relatively short tenure combines to create a relationship wherein the Ombudsman is and acknowledges to be subordinate to the will of Parliament.

Individual members of the Danish Parliament refer only about five complaints to his office a year. The Ombudsman is not enthusiastic about receiving many complaints from members.

Denmark has a complicated system of proportional representation in Parliament. Political parties are represented in Parliament in the proportion to percentage of votes received provided that the parties each receive at least 2% of the votes.

The country is divided into 103 electoral districts which are distributed according to a set formula to ensure precise proportional representation. While the percentage of votes received by each party determines the number of seats it will hold in Parliament, the number of votes cast for the candidates determines who will be elected to the seats. In other words, the candidates in

any one party with the largest number of votes are elected to the seats distributed to that party in accordance with the set formula.

The members regard their function primarily as legislators. The role of a member as an "ombudsman" is on the whole unfamiliar. It is recognized that the members and the Ombudsman have very separate functions and work quite independently one of the other.

Ministers are appointed and assigned portfolios by the Prime Minister. Each minister is politically and legally responsible for the activities of the Ministry.

Some Cabinet Ministers of the Government have expressed the view that the Ombudsman by investigating a matter on his own initiative has encroached upon the role of the Opposition Parties to Government. This may explain in part the reason why this discretion is exercised so sparingly.

(b) Sweden

Like Denmark the Ombudsmen are elected by the Swedish Parliament for a period ending upon dissolution of Parliament for a general election. The Swedish Parliament has the power to dismiss any Ombudsman should he cease to enjoy its confidence. In fact, it is upon this basis that the Swedish Constitutional Committee receives and considers the Ombudsman's annual report to the Swedish Parliament once a year in respect of the performance of the Ombudsman's office. It is recognized and accepted that should there be any significant degree of loss of confidence a recommendation for removal by the Committee would follow and be met with swift action by the Parliament. There is effectively no direct access by the Ombudsmen to Parliament as a whole. Any representations the Ombudsmen may wish to make to Parliament must be made to the Constitutional Committee who decides whether the representation is to be carried forward to Parliament.

There is no formalized relationship between the Ombudsman and the 349 members of Parliament. Infrequently a member might refer a complaint to the office.

The 349 seats in Parliament are distributed among the political parties whose candidates have obtained at least 4% of the votes cast in accordance with a formula which ensures proportional representation. Accordingly, a member does not exclusively represent any one of the 28 constituencies in the country. A member's activity is confined mostly to legislative matters. Little time, if any, is taken with "ombudsman" matters on behalf of constituents.

A minister is not responsible, in the British sense, politically or legally for the administration.

This relationship in Sweden is further complicated by the fact that there are four Ombudsmen. Each of the four contribute to the context of the annual report although the Chief Ombudsman (Ulf Lundvik) appears to retain final say in the report's content. Therefore, their actions are ultimately scrutinized by Parliament individually and collectively in the context of the operation of the entire office. Because the annual report is reviewed on Parliament's behalf solely to determine and report whether the Ombudsmen, individually and collectively, continue to enjoy the confidence of Parliament, the Ombudsman and each member of his staff are very conscious of a need to maintain a level of performance which will withstand such a scrutiny. In this respect, Parliament very much "watches the watch-dog".

(c) Israel

The Commissioner For Complaints From The Public (Commissioner) is appointed by the Israeli Parliament for five-year terms. He must report to it annually on his activities. He may also submit special reports to Parliament.

As with other jurisdictions this reporting relationship is indirect. The Israeli Committee for State control affairs is the vehicle of Parliament which

receives, considers, and reports upon the annual and/or special reports of the Commissioner. The reports of the Committee and therefore, the report of the Commissioner, are debated formally in Parliament. Last year, the debate covered all or part of two successive days.

The referral of complaints by members of the Parliament to the Commissioner's office is more frequent than in the two Scandinavian countries. However, there appears to be very little direct communication between a member of the Parliament and the Commissioner's office. In 1,976 of the 5,742 complaints submitted, only 47 were referred by members.

The respect for and support of the office by Parliament is quite strong. This must be due in part to the duality of roles of State Comptroller and Commissioner performed by one person and the enormous respect Parliament has for the State Comptroller, both the office and the person.

While Parliament does have the authority to remove the Commissioner upon a 2/3 majority vote, it has never been exercised. However, Parliament does demand a very high standard of performance of the office and would probably not hesitate to exercise that authority should any successor holding that office fail to meet that standard.

The Commissioner has a clear understanding of what his responsibilities to Parliament are. In his own words, "... to persuade Officialdom to take the citizen more into account, to prevent or to remedy unnecessary suffering, and to get rid of misunderstandings and bad feelings that should never have arisen".

He recognizes that he is Parliament's representative to attain those goals for the member of the public affected. He demonstrates in word and in deed a deep respect for members of Parliament, both collectively and individually. They in turn reciprocate that respect with total support for his activities.

(d) United Kingdom - Parliamentary Commissioner for Administration (Commissioner)

The Commissioner is appointed by the House of Commons until he or she reaches age 65 or is relieved from office by Her Majesty at his or her own request or by Her Majesty in addresses from both Houses of Parliament.

The relationship with the House of Commons is unique from all other Ombudsmen jurisdictions visited. The Commissioner is totally dependent on members of the House of Commons for his workload (in 1977, 901 complaints). Members generally refer complaints to him which they have been for some reason unsuccessful in resolving themselves. This places the Commissioner in a somewhat awkward position in resolving matters referred to him and as regards the expectations members have as to his ability to obtain a resolution of the matter satisfactory to the complainant.

For the very same reason the relationship between a member of the House of Commons and the Commissioner is more personal than the other countries. It is recognized that both parties have a common interest in the disposition of the complaints. The complainant is usually the member's constituent. Because of the unique relationship, there is a sense that the Commissioner is working for that member and feels an obligation to keep him informed as the complaint is processed.

The reporting relationship is also unique. In respect of individual reports, the Commissioner must send to the member of the House of Commons by whom the request for investigation was made, a report of the results of the investigation. Besides the Commissioner shall report to the House of Commons on an annual basis in general terms on the performance of his duties. This reporting relationship is an indirect one since the report is received, considered,

and subsequently reported upon by the Parliamentary Select Committee on Parliamentary Ombudsmen. The Commissioner does not have direct access to the House of Commons for any reason. His line of communication is the Select Committee who reports to the House annually.

Because of the unique relationship, there is no doubt that the Commissioner is available to serve members. His conduct respecting the investigation of complaints, reporting on the results of the investigation and appearances before the Select Committee are all consistent with total respect for and allegiance to the House of Commons.

(e) Local Commissioner, England and Wales

The local Commissioner's office was created amidst significant opposition from local governments throughout England. It was recognized that to create the office and to impose it upon the operation of local authorities without any facility for mediation would have caused outright confrontation. Accordingly, in England the Local Administration Act, 1974, creates a Representative Body for England and Wales whose membership consists of a representative of persons from the various levels of local government throughout the country. The Representative Body is the vehicle to which the local Commissioners report on their annual activities. It was created primarily and also has to date acted as a "shock absorber" in respect of the reaction of local authorities to the involvement by the local Commissioners in their affairs. It was recognized by government that no legislation would ever have been accepted at the local level without a consultative body composed of local government representatives with the authority to directly monitor and if necessary, control the operation of the Commission. The Body also gave approval to the choices of Commissioners before they were appointed. This Representative Body has a continuous dialogue

with local authorities respecting the activities of the Local Commissioners. It does not hesitate to discuss at any time with the Commissioners any need for a change in their procedures which may have offended some local authorities.

The Commissioners' very tentative, cautious and thorough approach in the performance of their functions is designed to gradually win the support and respect of the local authorities directly and through the vehicle of the Representative Body. The Representative Body is still suspicious of the concept of local Commissioners. It is, however, trying to make it work. This, in part, explains the cautious approach adopted thus far. The Committee foresees a difficult struggle by the local Commissioners to gain the support of that body so necessary for an effective performance of their functions. The extent to which the Commissioners become a force influencing the performance of local governments will be directly related to whether the Commissioners can persuade or cause the Representative Body to be more supportive of their activities.

(f) Scotland

Strangely, the Scottish legislation did not provide for a representative body of local authorities with the same powers and duties as the U.K. In Scotland, the corresponding body performs the sole function of approving the Commissioner's annual budget. The Commissioner has in some ways been working to his own design to establish a meaningful and effective working relationship with the local authorities. The Commissioner believes this relationship is developing well and that he has the confidence and respect of most local governments in Scotland.

The Commissioners have adopted a cautious and low-key approach in respect of the performance of their duties. This is a wise choice for the Commissioners to make. Had there been an immediate confrontation with those

bodies it might very well have caused irreparable harm to the concept of the local Commissioner.

(g) City of Jerusalem

The Ombudsman is appointed from the public service of the City by the City Council. He remains a public servant during his tenure.

As described earlier, his authority to deal with complaints from the public is derived solely from council. He reports from time to time to Council on his activities. Recommendations made by him to departments within the public service which are not implemented may be referred by him to Council which can, if it considers it appropriate, require the department to implement that recommendation.

COMMITTEE OF PARLIAMENT

(a) Denmark

The Justice Committee of the Danish Parliament has the authority to receive and consider the annual report of the Ombudsmen and thereafter to report thereon to Parliament. The premise of considering these reports differs substantially from that in Ontario, as does the method by which the report is received.

As the Justice Committee for Parliament it performs functions similar to the Standing Committee for Justice in Ontario. The Ombudsman's reports are only a fraction of its total workload. The Ombudsman, on a regular and continuous basis, refers individual reports of his opinions which he considers to be of special interest to the Committee. The Committee or other Committees through it, considers on a regular and continuous basis, those reports which will be included in his annual report for the reporting period in question (ending September 30th in each year). Therefore, by the time the annual report is released, the Committee will have completed most of its work.

Whenever the individual reports of the Ombudsman contain issues relevant to the Committee's terms of reference, it may in its discretion, review that report in more detail and take whatever action it considers necessary. Likewise, to the extent that issues contained in Ombudsman's reports may be of interest to other Parliamentary Committees with different terms of reference, this Committee acts as a screening device by referring those issues to the appropriate Committee for consideration.

The Committee does not consider the specific recommendations etc. made by the Ombudsman and report thereon to the Parliament. Rather the Committee and through it, other Committees, take that which they consider beneficial to their own purposes and advance those issues where necessary and appropriate within the context of their own relationship to Parliament. The Ombudsman does not believe he has the right or authority to ask or request of the Committee that it do anything in respect of issues arising out of his report. The nature and extent of the action taken is, he concedes, entirely up to the Committee. He is, however, conscious that the Committee feels a responsibility to support his office, without which his effectiveness would be greatly diminished.

The Committee has no obligation to inform the Parliament specifically of any report and recommendation of the Ombudsman. However, Article 10 of the Directives to the Ombudsman provides the Ombudsman with the discretion to request the Committee to transmit or inform the Parliament of the report which he has tabled with the Committee. The Ombudsman does not believe this provision has ever been exercised.

There is very little if any direct relationship between the Ombudsman and the Committee. On average, every two years the Committee will have a

general discussion with the Ombudsman respecting general matters, such as the adequacy of his office and staff. The Committee has been reluctant to become involved in more detail with the Ombudsman for fear that it would be taken as interference with him in the performance of his office. The independence of the office is something which the Committee guards quite carefully. One principal reason for this is that the Committee and Parliament have confidence in the Ombudsman and his ability to carry out his functions as they expect they should be carried out.

The Committee only calls a member of the public service before it to discuss the issues raised by the Ombudsman's reports. The discussion is on a level removed from the Ombudsman's involvement. It is largely confined to questions of how legislation can be improved to benefit the public.

If a department of the public service should ever refuse a recommendation of the Ombudsman, the Committee would not call the Ombudsman, and the minister of that department (our equivalent Deputy-Minister) together before it. Rather it would invite the minister to explain his reasons for refusing in the hope that this informal "pressure" would resolve the impasse. The Committee has no authority to make a recommendation to Parliament respecting the position taken by the department.

Notwithstanding the limited authority the Committee has over the activities of the Ombudsman, it is generally recognized that if the Ombudsman acted in an improper manner or acted beyond the scope of his authority, it would review this with him and report in an appropriate way to Parliament. However, the Committee believes it would be highly unlikely if this action would ever become necessary. The Ombudsman would probably resign his position on the grounds that he had ceased to enjoy the confidence of Parliament. The

Ombudsman's sense of office and honour in this respect have historically been very strong.

In the event of the death or removal of an Ombudsman, the Justice Committee selects an Ombudsman pro tem until the Parliament has elected a new Ombudsman. Although it is not specifically set out in the Legislation, it appears the Committee is also charged with the responsibility as it receives and considers Ombudsman's reports, to report to Parliament if it concludes that the Ombudsman is no longer worthy of the confidence of Parliament.

(b) Sweden

The relationship between the Swedish Committee on the Constitution and the Ombudsmen of Sweden is more formalized. The Committee's terms of reference in addition to the Ombudsmen includes among others, the examination of the conduct of Ministers; the manner in which Government matters have been performed; constitutional law; laws relating to the structure of Parliament; general administrative law; public media; freedom of speech and freedom of religion. It is the vehicle of Parliament that receives the reports of the Ombudsmen. It also meets with the Ombudsmen at their request to discuss matters of general policy, procedures and administration.

In addition to providing the Committee with an annual report, by statute they must provide the Committee with all records, minutes and files of the office relating to the period covered by the report. The staff of the Committee which consists of three lawyers and one political scientist, attend the office of the Ombudsmen and review all of the documentation which they consider necessary to fully brief the Committee members for the Committee's proceedings.

The Committee's proceedings consist of a review with the Ombudsmen and staff of the year's activities. Included therein are discussions with

Ombudsmen on the files wherein members of the public have written to the Committee criticizing the office's handling of the particular complaint.

Attendances by ministers and members of the public service are infrequent and only when a particular decision of an Ombudsman has not been followed. However, there is a very strong sense that should the Ombudsmen depart from an acceptable standard of behaviour or should the Ombudsmen attempt to perform outside their sphere of competence, the Committee would act swiftly and effectively to restore the acceptable standard and context of performance.

The principal reason for the Committee's consideration of the report is to advise Parliament whether the conduct of the Ombudsmen in the performance of their functions during the reporting period warrant their removal from office on the grounds that they no longer enjoy the confidence of Parliament. It is against this background that individual files of the office are reviewed. This recommendation has never been made nor is it considered likely that it would be necessary.

There is a sub-committee of the Committee called "The Ombudsman Committee". It is responsible for the selection of candidates for the office of Ombudsman and for recommending ultimately to Parliament the most appropriate choice. When this function is undertaken, the sub-committee canvasses all political parties for their choice. The person chosen appears to be one who is acceptable to most, if not all the political parties represented.

(c) United Kingdom

The Select Committee on The Parliamentary Commissioner For Administration is empowered to receive the reports of the Commissioner as they become available and to report thereon to the House of Commons. The

proceedings of that Committee consist entirely of a review of selected cases referenced in the Commissioner's report with respect to what steps, if any, the government authority has taken or intends to take to implement redress of the maladministration and/or to effect a change in administrative policy in order to avoid a repetition of similar consequences.

The Committee is totally supportive of the Parliamentary Commissioner. There does not appear to have been any circumstances since its creation wherein the conduct of the Commissioner or his staff have been questioned respecting the handling of any complaint or the substance of any report.

Soon after the Annual Report is received by the Committee, the Chairman and the Commissioner meet to prepare a draft list of cases for the Committee to consider during its proceedings. This list is prepared largely on the recommendation of the Commissioner and consists of cases wherein maladministration has been found by him and a follow-up of the department in question is required to determine what if any steps have been taken to rectify the particular injustice. This list is then finalized with all members of the Committee who may add or delete from the list.

The Committee Chairman generally meets briefly with the Commissioner before the formal hearings start to review the agenda of cases to be dealt with that day. During the Committee proceedings the Commissioner will review the substance of the complaint and his findings with the Committee generally, reading from the text of his report. Representatives of the authority concerned have beforehand been summoned to appear before the Committee on the day in question. After the Commissioner's summary, they are then given an opportunity of addressing remarks to the Ombudsman's findings and to inform the Committee as to the steps taken to date.

Members of the Committee both collectively and individually are given an opportunity of questioning both the Commissioner and the authority representatives on points of particular interest to them. When the matter has been canvassed, the Committee then deliberates the issue and records its conclusions for the record. In view of the precise and formal method of reporting, the Committee has felt it unnecessary to review the methods the Commissioner used to investigate a particular complaint or whether he complied with the statutory requirements during the course of that investigation. It appears that no government authority has questioned the Commissioner's activities in either of these areas. Nor does it appear that the Committee has any reason to be concerned with the Commissioner's activities in these areas.

There is a very strong sense that both the Parliamentary Commissioner's office and the Select Committee are working to a common end. There are no elements of controversy or conflict between the Commissioner and the Committee. The Commissioner is intensely respectful of the Committee and its proceedings and is always at the Committee's disposal when it considers appropriate. Any matters of Committee decision with respect to the conduct of the Commissioner's office or policy respecting the handling of certain complaints would be implemented without question by the Commissioner.

The Committee relies entirely upon the resources of the Parliamentary Commissioner and his office to brief it respecting the nature and substance of the complaints and the manner in which they have been investigated. It is an open question, therefore, what the direction of the Committee would be if it had the staff and resources to scrutinize more carefully the Commissioner's operations. However, it is the Committee's sense that Sir Idwal Pugh and his staff have taken very great pains to ensure that their standard of performance is

beyond any criticism by the Committee or the member who referred the complaint to him.

A recent report of the Parliamentary Committee of Justice has proposed that the Parliamentary Commissioner should be able to accept complaints either through a member of Parliament as presently provided in the Legislation or directly from the public. The Ombudsman in his Annual Report for 1977 has responded that he is willing to work within such a system. As an indication of his willingness, he has proposed that the present legislation be changed permitting the general public to address him directly. It is significant that the Parliamentary Commissioner has proposed this change in procedure "subject to the agreement of the Select Committee". In this way, the Parliamentary Commissioner avoids any conflict with the Committee or with Parliament should either disagree with his new mode of procedure. It also underscores the nature and extent of the respect the Parliamentary Commissioner has for the views and opinions of Parliament.

(d) Israel

The State Control Committee is charged with the responsibility of considering the Commissioner's reports and reporting to Parliament. This is only a part of its authority over all reports emanating from Dr. Nebenzahl acting in both capacities. It is a relatively new Committee and accordingly is still feeling its way with respect to its function vis-a-vis the Commissioner's office and the issues raised by the Commissioner's reports.

Certain cases and issues are selected from the Commissioner's report usually upon the suggestion of the Commissioner and representatives of the public service are called as witnesses to explain the reasons for the findings of the Commissioner and to inform the Committee what steps are being taken to

rectify the complaint. However, the Committee lacks the staff and resources as yet to scrutinize the Commissioner's report and investigate and prepare the individual cases on its own. Rather it relies most heavily on the resources of the Commissioner and his office for this purpose. We were told that the Committee expects in the years to come it would take on this responsibility more independent from the resources of the Commissioner.

There have yet to be any incidents wherein the conduct of the Ombudsman or any member of his staff respecting standard of performance has been questioned. However, the Committee considers it within its terms of reference, at any time in the future or with any other Commissioner, to scrutinize his operation and to take whatever steps it considers necessary to cause same to be improved as the circumstances warrant.

The Committee's starting point in considering issues raised by a particular complaint is the report of the Commissioner. It has never had reason to question the accuracy of any report, any investigative procedures or the authority in the Commissioner to make a particular recommendation. This is mainly a testimony to the level at which the office performs. It is an open question however whether the Committee's starting point will change if, as and when its resources are expanded in the area of preparation for its proceedings.

The Commissioner's views on the Committee's activities in this area are very definite:

"If the Committee ever felt a need for constantly and on a wide range checking the facts which the Comptroller supplies to it, then much rather than setting up a machinery for that, I would recommend that they initiate changing the Comptroller because, generally speaking, the basis of the work must be not only that the honesty of the

Comptroller and his office is not questioned it has never been done but even the professional skill is generally accepted by the committee."

This Committee's general impression is that at present the Commissioner is more organized and confident in his dealings with the Committee than it is with him. However, if the views of a number of the Committee's members prevail, before too long the relationship will become more evenly balanced.

(e) City of Jerusalem

There is no parallel body within the government of the City of Jerusalem with whom the Ombudsman is required to relate.

PUBLIC SERVICE

(a) Denmark

While in the beginning the office of the Ombudsman attracted controversy and some skepticism, today it is generally accepted by the public service. There are few occasions wherein an opinion and recommendation made by the Ombudsman to a particular government authority is not accepted and implemented. This is due in part to the fact that the public service recognizes the degree of support given to the Ombudsman by Parliament and the Justice Committee.

Most complaints are investigated by a review of the government file by a representative of the Ombudsman's office. There are occasions wherein follow-up communications are required and where personal interviews are conducted. Pursuant to the Ombudsman Act of Denmark, the authorities must co-operate in disclosing information and documentation in a way similar to that in Ontario. That notwithstanding, there are no major items of contention respecting jurisdiction, conduct of investigations or implementation of recommendations.

One reason for this may be the Ombudsman's conscious effort not to formulate opinions or to take sides without a full and fair hearing of all of those concerned. To the extent that the Ombudsman is perceived as fair minded, the public service has respect for his opinions and recommendations.

The investigations conducted by his office appear complete in every respect and the opinions rendered by the Ombudsman are full, fair and accurate. Accordingly, the public service has little ability to avoid adhering to an Ombudsman's recommendations on the grounds that it lacked merit or it was formulated on the basis of inaccurate or an incomplete understanding of the relevant facts.

One other reason for the acceptance of the Ombudsman by the public service has been that the Ombudsman's office does not act in any way within the political sphere. To the extent that recommendations contain elements going to government policy or to political considerations, the public service would of necessity and probably under direction resist the Ombudsman's involvement.

A civil servant or a local government employee has the ability to request in certain circumstances that the complaint be dealt with under the appropriate sections of The Civil Servants Act or an applicable by-law of the local government as the case may be. The Ombudsman's jurisdiction is accordingly, concurrent with and can be excluded by the machinery available within the public service to investigate and act in respect of complaints from the public.

(b) Sweden

Historically the public service literally lived in fear of the office. The role as prosecutor demanded respect and of itself gave a public servant ample reason to comply with any opinion of the office.

However, now that the main function of the office is to render decisions with or without admonitions, the fear of prosecution is less of a factor in causing a public servant to follow a decision. However, there is a certain "hangover" in respect of the perception that the public service has of the office as a prosecutor. No doubt this has partly contributed to the acceptance of its opinion and admonitions.

As in Denmark, very few if any, decisions of the office are rejected by the public service. The extent of the support given to the office by the Parliament and the Constitutional Committee is generally known and this in part contributes to the success rate.

Additionally, the press is constantly monitoring the various decisions rendered by the office to the public service and to that extent there is pressure to implement their decisions.

This Committee found no evidence of any circumstances wherein the public service has rejected an Ombudsman's decision on the grounds that the investigation had not been properly carried out; that the relevant provisions of the legislation were not being adhered to or that the Ombudsman was acting beyond the scope of his authority.

The working relationship with the local authorities is another matter. The Ombudsmen do not enjoy the same respect or co-operation. For this reason, the Ombudsmen have been more lenient and more informal in their relationships. There does not appear to be any present intention to alter this situation and to that extent the role of the Ombudsman at the local government level is largely ineffective.

(c) Israel

Because of the joint functions of State Comptroller and Commissioner, the Commissioner's office enjoys the maximum in co-operation. Reports of the Commissioner with recommendations are always accepted and implemented. The respect that the man in both offices has in the eyes of the public service is extraordinary. It is almost unheard of or unspeakable to question any request or representation emanating from that office.

The Commissioner has adopted a procedure when investigating complaints that when he informs the government authority of the complaint and asks it for comment he has already given the benefit of the doubt to the complainant. Any response from the department is in the nature of "show cause" why it should not be found at fault or why it should not rectify the particular matter to the satisfaction of the complainant.

(d) United Kingdom

Because the Parliamentary Commissioner investigates complaints pursuant to a request and referral by a member of the House of Commons, the co-operation he enjoys with the public service is analogous to that enjoyed by an elected representative. The public service as with other jurisdictions is required to produce all necessary documentation, information, etc. and generally they have complied with the requirement.

Opinions and recommendations of the Parliamentary Commissioner have only in the rarest occasions been rejected. This is due in part to the degree of support given to him by the Select Committee. It is also a product and a testimony to the thoroughness with which the complaints are investigated and the quality of the reports and recommendations that are made. The fact that almost the entire staff of his office are seconded civil servants on a revolving

basis also contributes to the high incidence of acceptance of his recommendations.

(e) City of Jerusalem

The Ombudsman, being a member of the public service, is in the unique situation of dealing with complaints which concern the actions of a group of which he is a member.

Most of the complaints he resolves are done on an informal basis. This is in part due to the unique relationship and his ability therein to persuade his colleagues on almost every occasion that his "recommendations" are the most appropriate in the circumstances.

PRESS

(a) Denmark

The Danish Ombudsman Act contains an obligation on the Ombudsman to maintain secrecy. However, the press, on a weekly basis, confers with the Ombudsman and obtains from him particulars of cases received during the previous week of special interest or significance. Thereafter, on an anonymous basis, the press will report upon the Ombudsman's involvement and will follow the matter through to his final report and recommendations. In that way there is a constant pressure on the public service to co-operate with the Ombudsman and to effect a resolution of the action or whatever which has given rise to the complaint.

Opinions of the Ombudsman are given quite wide publicity in all papers in Denmark. The press has largely been supportive of his efforts and of the standard of performance of his office. There appears only to have been one area wherein adverse comment has been made. The Ombudsman was a former civil servant. Accordingly, some members of the press questioned his ability to

be objective in dealing with matters of complaint respecting the public service. However, that issue has not appeared to interfere with his good relationship with the press and the support it gives to his efforts.

(b) Sweden

The Press Act of Sweden provides for full disclosure with very few exceptions, of the conduct of all public authorities. The Ombudsman comes within the provisions of this Act. Accordingly, all affairs of the Ombudsman's office are subject to the scrutiny of and disclosure to the press.

Every day up to three members of the Swedish press attend the office of the Ombudsman and review the details and particulars of the complaints received that day. The press is then free to report thereon. However, they have generally kept the identity of parties affected by the complaint anonymous at least until the Ombudsman has completed his investigation and formulated his decision.

The disclosures to the press and its ability to continuously report thereon has a very definite influence on the conduct of the public service both in respect of its relationship with the Ombudsman in its attitude towards rectification of any matters giving rise to the complaint and in the degree with which it accepts and implements an Ombudsman's decision.

(c) Israel

Because of the stature of the State Comptroller and Commissioner for Complaints from the Public, the activities of the office are given a high profile. The publication of the State Comptroller's Report, annually, is given widespread publicity.

While the Commissioner's report is given less publicity, nevertheless it is thoroughly scrutinized by the press and thoroughly reported upon on an anonymous basis.

The first two reports released by the Commissioner in the first two years of operation received some criticism from the press as being narrow in scope and application. However, the press has since then been virtually free of criticism towards subsequent reports and the Commissioner's activities disclosed by those reports.

The Commissioner is less dependent upon press support for implementation of his recommendations by the public service than Denmark and Sweden. This is probably due to the fact that the relative influence of his reports both as State Comptroller and Commissioner is greater than the other two.

(d) United Kingdom

At the Parliamentary Commissioner level, the press does report upon the Annual Report as it is made available. Generally, the press has been supportive although comments and editorials have occurred advocating the expansion of the Parliamentary Commissioner's authority by removing him from the rein of individual members. However, the press remains critical of the office on the grounds that it cannot and will not disclose more particulars of the complaints and its investigations thereof.

(e) Local Commissioners (England, Wales and Scotland)

At the Local Commissioner level, the relationship with the press is extremely important. As provided by both Local Commissioners Acts, opinions of the Local Commissioner when received by a local council must be made available for public inspection and so advertised in the press. Therefore, the press is continually monitoring the opinions made about local authorities and scrutinizing the response thereto of the public authority. All Local Commissioners stated that so far the press has been supportive of their roles albeit somewhat impatient respecting the time within which complaints are processed and the rather limited sphere of influence they have over local councils.

PUBLIC

(a) Denmark

The office of the Danish Ombudsman is a very personal and open institution. The Ombudsman and his staff each endeavour to meet on a personal basis with at least 10% of the complainants.

Although the principal means of investigating a file is by review of documentation, complainants are interviewed whenever they specifically request or whenever it becomes necessary so to do having regard to the circumstances of the complaint.

The Ombudsman is generally known throughout the country and respected for the work he performs. His modest office is located in the famous walking streets of Copenhagen, the most "person-oriented" area in the country. However, because of fiscal constraints and demands of his present workload, he is unable to travel the country with any regularity. Accordingly, he is better known and considered more effective in Copenhagen.

The Ombudsman is of the view that his workload is directly related to the extent that his office is given publicity or is publicized. He is confident that given the right amount of publicity he could double the workload of the office. He feels quite strongly that an Ombudsman should not advertise the function of his office as a service or protection against bad administration and would be inviting unnecessary or invalid complaints. Such advertising he believes would only tend to create a preconception in the public's mind respecting the conduct of the public service generally.

(b) Sweden

The relationship between the Ombudsmen and the public in Sweden is somewhat more formal than Denmark. The office is not generally open to the

public except for two hours each week. The Chief Ombudsman endeavours to see 5% of the complaints received by the office and his staff an additional 10%. The other three Ombudsmen advised that they see fewer number of complainants.

Again the principal means of investigating a file is by review of documentation. However, when necessary a complainant is interviewed personally. There does not appear to be any continuing means of reporting the progress of a complaint to the complainant. The complainant is in some respects secondary to the issues arising out of his complaint. The foremost interest of the Ombudsman is to rectify the action giving rise to the injustice, not to rectify its consequence. Accordingly, the complainant is in some respects a vehicle to get at the particular reason for injustice and to that extent his or her particular predicament becomes "lost in the shuffle".

(c) Israel

The Commissioner has a policy that if he cannot see all complainants coming to his office, he sees none. Accordingly, only members of his staff meet with or interview complainants on a personal basis. Generally when a request is made by a complainant for a personal interview, it is granted. There is no policy of the office, however, to see as many complainants on a personal basis as is possible.

The office and Parliament both support a policy of wide publicity to the office. The Commissioner believes that the effectiveness of his office will increase as the public becomes more aware of its existence and its availability to everyone. The amount of publicity undertaken by the office will probably increase during the next few years.

(d) United Kingdom

The Parliamentary Commissioner and the Local Commissioners are somewhat removed from the actual complainant. This is, of course, due to the fact that complaints must be received by a member of the House of Commons or a member of the local authority as the case may be before referral to the Local Commissioner. The types of complaints are generally those that do not require urgent action. They may take as much as six months to process.

The Parliamentary Commissioner in early 1977 embarked upon a campaign to expand the public's knowledge and information about his office. It is not yet known how successful this campaign has been. It appears that the profile of the office is still low.

(e) Local Commissioners (England and Wales)

The Local Commissioners have since the office's inception, recognized the need to publicize the office so that as many people as possible know about the office and the functions it performs. However, economic circumstances and the policy of the Representative Body have prevented any widespread publicity. Instead the Commissioners have taken "selected opportunities" to inform the public about the office.

Recently steps have been taken at the Local Commissioner level to advertise the office more and it has resulted in a higher incidence of complaints. Since the Local Commissioners' offices are relatively new, any conclusions respecting the attitude of the public, etc. are tentative at best.

(f) Local Commissioner (Scotland)

The Local Commissioner recognizes the need to publicize the existence and functions of his office generally throughout the country. Fiscal

restraints however, have prevented any continuous and extensive activities in this area.

(g) City of Jerusalem

The Ombudsman strives to see every complainant in his office no later than 48 hours after the complaint is received. He believes personal contact with the public is important to the effectiveness of his office in the eyes of the public. He also recognizes the need to publicize the office and he intends to expand his efforts in this regard. This will increase the number of complaints received by him and require him to increase his staff by at least one person.

PART III

ORGANIZATION AND OPERATION OF OMBUDSMAN'S OFFICE

The extent to which any Ombudsman efficiently and effectively fulfills his statutory functions is profoundly influenced by how his office is organized and who he has assisting him in the performance of those functions. The demands of the job placed upon the Ombudsman make it impossible for the job to be done alone. Because the job cannot be done alone, an Ombudsman's performance is largely measured by that of his staff.

Almost without exception, offices of Ombudsmen visited by the Committee were staffed by highly educated, qualified and competent people who brought to their job an experience and insight necessary to deal with issues arising out of the conduct of the public service which has been perceived by a member of the public to have been unjust or to have adversely affected him in some way.

The incumbent Ombudsmen were reflected in their respective office's organization and operation. This may, of course, be in part due to the fact that

the Ombudsman is the "boss", responsible for the ultimate decision on wrong doing and formulation of recommendations. However, one cannot overlook the influence of the character of the individual.

(a) Denmark

Mr. Nielsen is the second person to occupy the office. He had previous experience in the public service as Director of General Prison Administration.

He is a man in complete control of and influence over the entire Ombudsman operation in Denmark. He is privy to all cases coming to the office on a daily basis and gives general direction and advice to his staff before the investigations are undertaken on his behalf. He is intimately involved with all reports prepared subsequent to a completed investigation and of course, formulates the conclusions arising from the investigation.

Mr. Nielsen is an extremely personable and friendly man and this characteristic is reflected by the Ombudsman's office. He is accessible to all members of his staff and in fact takes great interest in their individual workloads. On a daily basis, he has lunch with a majority of his staff wherein cases that have come in that day are reviewed and discussed.

He has been described by others as fair, thorough and extremely hard working. These are qualities which he demands of his staff in the performance of their delegated responsibilities.

The Ombudsman's office is situated in the walking streets in the centre of Copenhagen. It is a walk-up to a third floor office. The surroundings are unpretentious but extremely functional. Mr. Nielsen's office for example, is lined with books, statutes and other resource material required by him in his day-to-day activities. A table in his office is stacked with current files which are worked on by him directly.

At present, the office consists of two divisions, each with a division head. He expects to receive budget approval for the expansion of his staff which will afford him the opportunity of creating three divisions thus lessening the workload of the two present divisions.

One division is responsible for such matters as social welfare, family law, housing, building codes, land use planning and agriculture. The division head, who is a lawyer, is assisted by five investigators.

The second division deals with such matters as taxation, the administration of justice, immigration, public service legislation and education. That division head, also a lawyer, is assisted as well by five investigators.

The majority of complaints are received by the office in written form and are reviewed individually by the Ombudsman who thereafter, personally delegates them to the appropriate division.

If a complaint is investigated, a member of the staff will review all appropriate files and speak to all persons within the public service considered to have information necessary to complete the investigation. There appears to be an emphasis more on investigation of documentation rather than an investigation of persons.

When the investigation has been completed a member of the Ombudsman's staff assists him in the preparation of the report. It is generally a lengthy document describing in detail the issues contained in the complaint, the matters revealed by the investigation and the conclusions of the Ombudsman always supported with reasons. The conclusions and opinions of the Ombudsman are usually general in scope so that they might be applied not only to the issue arising out of the specific complaint but to parallel and comparable issues within the public service. The reports bear a similarity to judgments of a court with

conclusions of fact and opinions referable to the particular actions giving rise to the complaint fully supported by those facts.

The total staff of the Ombudsman's office in 1977 consisted of 20 persons, excluding the Ombudsman, consisting of two division heads, ten investigators with legal training and eight secretaries.

In the year ending December 31, 1976 the Ombudsman personally inspected two institutions for mentally retarded persons, six local prisons, two state prisons, one military camp and one navy training school. He and his staff in that year dealt with 1,856 complaints of which 85 were investigated on his own initiative. Of the 1,856 cases, 1,070 were not investigated by the Ombudsman as being out of his jurisdiction or not containing sufficient grounds for investigation.

The office spends approximately 20-25% of its time dealing with non-jurisdictional complaints. Generally, a complainant is informed in writing that the complaint is beyond the Ombudsman's jurisdiction within ten working days of its receipt. This letter may suggest any other recourse available to the complainant.

Generally, the Ombudsman has not experienced difficulty in determining questions of jurisdiction. Accordingly, the office commences processing jurisdictional files almost immediately after their receipt.

For the last four years the office has completed investigations of between 700 and 800 cases annually. Of those cases investigated, something in excess of two-thirds result in no criticism or recommendation to the government department affected. The remaining one-third or approximately 200 consist of criticisms of certain actions and/or recommendations for change. As stated elsewhere in this report, these reports and recommendations are almost universally accepted and implemented.

(b) Sweden

It was more difficult for the Committee to gain a sense of the personal influence over the office for the obvious reason that there are four Ombudsmen in Sweden, each performing in specific and unrelated areas one to the other. The office is situated in the centre core of Stockholm. It is a turn-of-the-century gracious old building modernized to the needs of the Ombudsmen's operations.

It is not always accessible to the public. One does not gain the sense that the public will receive an open and warm reception there. The office is extremely functional divided physically in respect of each of the Ombudsmen's sphere of activity. It contains the most modern of equipment, including computer resources.

The offices of each of the Ombudsmen are elegantly decorated to their individual taste, but are nevertheless functional as the circumstances require. All four Ombudsmen appear quite formal in the performance of their duties. However, they are all, when the occasion requires, approachable and sympathetic to the needs of the complainant. At present the Ombudsmen staff numbers approximately 60, of whom 27 are lawyers. As expected, the office is divided into four divisions with an Ombudsman heading each.

The Chief Ombudsman, Ulf Lundvik, oversees matters respecting the public's access to government documents, matters of employee/employer relations respecting state and municipal authorities and matters of unique or political interest (he is presently completing his investigation into the Government's treatment of the movie director, Ingmar Bergman).

Mr. Lundvik is also responsible for the office administration, the office's relations with the press and matters of the office's international concern

such as visits by Select Committees. He has two lawyers working directly for him.

Ombudsman Anders Wigelius is responsible for the courts, public prosecutors, the police and prisons. He has eight lawyers working directly for him.

Ombudsman Karl-Erik Uhlin is responsible for the armed forces, urban affairs, communications and regional and local governments. He has seven lawyers working for him.

Ombudsman Leif Ekberg is responsible for matters of taxation, social welfare and education. He has eight lawyers working for him.

Reporting to each of the Ombudsmen is one chief of staff who might assist each of them at any one time in complex cases. That person conducts certain special investigations necessary in the circumstances and oversees the administration of personnel within the office.

The process of investigation is largely similar to that of Denmark. The emphasis is on documentary investigation. Where, however, the circumstances of the complaint require it, persons within the public service are interviewed by a member of the staff and where necessary, the Ombudsman himself will conduct an oral hearing.

All complaints received by the office in writing are answered immediately. A large percentage of the cases are completed within a short period by gathering the necessary information by a letter or a phone call. These consist of cases primarily where it is obvious from the face of the complaint that it is unfounded. The Ombudsmen's jurisdiction over complaints is determined soon after they are received by the office. The complainant will be informed within two weeks of receipt of the complaint of the non-jurisdictional determination

and of the office's decision not to investigate. It is not the practice of the office to refer these people elsewhere or suggest alternate recourses.

The remainder of the cases are processed in the usual way which process commences almost immediately upon the decision to investigate.

A member of the staff, always a lawyer, investigates the complaint and drafts an opinion for the approval of the Ombudsman in question. Once receiving that draft opinion, the Ombudsman reviews same and confirms or modifies the opinion as the circumstances require. There is therefore a more detached role of the Ombudsman to the process of investigating complaints. The Ombudsman does have, on a one-to-one basis, the benefit of conferring with the staff member who prepared the opinion should the circumstances require. Also in very important cases (such as the Ingmar Bergman case), the Ombudsman would conduct a substantial part of that investigation on his own and prepare the opinion himself. This all is subject to one great exception. If having regard to the circumstances of the complaint and the issues arising out of the investigation, the Ombudsmen decide to include it in their Annual Report, they will write the decision themselves knowing the reports will be scrutinized by the public and the Constitutional Committee.

Since 1970 the Ombudsmen have received approximately 2,500 to 3,000 cases per year. Of those cases received only 12% to 14% result in some kind of action in the way of investigation and subsequent report. For the period July 1, 1976 to June 30, 1977 the office completed 2,849 cases. Of that number, 1,226 were dismissed without investigation, 54 were referred to other agencies or state organizations with the competence to process such complaints, 1,276 resulted in no criticism after a completed investigation, 291 resulted in admonitions or other criticisms as a result of the investigation and two resulted in prosecution or disciplinary proceedings.

The high proportion of lawyers on the staff is due in part to the high level of competence and performance required of the office which is always subject to the scrutiny of the Constitutional Committee. It is also due to the wide spectrum of authorities within the jurisdiction of the Ombudsmen. The following is an example on a national scale, of the areas of government touched by the Ombudsmens' office: courts, public prosecutors, police, armed forces, prison administration, child welfare, social welfare, medical care, social insurance, labour, planning, local government, communications, taxation, education and culture, state church, agriculture, public health, civil service and medical care. This wide range of activities is also present in other jurisdictions especially Denmark and Israel.

(c) Israel

Any examination of the organization and operation of the office of Commissioner in Israel cannot be divorced from an examination of the office of State Comptroller and of Dr. Nebenzahl, the man.

As reviewed earlier in this report, the State Comptroller's office performs functions similar to the provincial auditor, on a national level and to a more intimate and extensive degree. The office has a staff of approximately 450 people with extensive experience in dealing with the public service and with an insight and understanding of the public service. The entire facilities of the State Comptroller's office are available to the office of the Commissioner (which has a staff of approximately 75 persons) by way of support for or resource to any "Commissioner investigation", notwithstanding that the offices are separately located in the City of Jerusalem and function independently. Generally the staff of the two offices perform functions separate one from the other. Some of the administrative functions (publishing, transportation, accounting) are performed for both departments by the same group of persons.

The staff has a reputation of being extremely thorough and highly qualified. Any representations or findings emanating from that office are accepted virtually without question.

In almost every respect, both the office of State Comptroller and office of Commissioner are a reflection of the man. He was trained as a lawyer and has extensive experience in the world of commerce. He is a former governor of the Bank of Israel. He is a deeply religious and highly moral individual. He is a devoted family man and extremely sensitive to the needs of his fellow countrymen. He has been described as a workoholic, a perfectionist and extremely demanding of the quality of performance of his staff.

The demands on his time in both offices are extraordinary. For that reason he is highly dependent upon his staff to provide him with accurate, comprehensive and appropriate assistance to afford him the ability to perform his functions at the standard demanded by him and having regard to many circumstances demanded by the public. The office is staffed with highly qualified persons and he has difficulty recruiting the staff required.

The office is organized like a ministry of government. The Commissioner has two assistants working directly for and reporting directly to him.

One assistant is responsible for keeping the Commissioner briefed on all matters arising from that section of his operation which require his personal decision and thereafter ensuring that his decision is implemented in the appropriate way.

The other assistant is responsible for the preparation of the Commissioner's Annual Report on his behalf. Additionally, that person monitors the progress of complaints within the office on his behalf and certain other general administrative matters.

Directly under the Commissioner is a director of the office who is served by a deputy director and one legal adviser. Working under the director and deputy director are three senior assistants to the director who supervise the activities in the eight departments which comprise the entire office. The lines of authority and supervision are not rigid.

The main categories of complaints dealt with by the various departments are: social services, taxation and other governmental charges, municipal matters, unsatisfactory service to the public, labour, telephone and postal service.

Complaints are investigated in much the same way as other countries visited. There is perhaps less emphasis on a documentary investigation as opposed to a personal one. Of course, the resources of the State Comptroller's office are invaluable to the investigative process.

The person responsible for the investigation confers on a regular basis with fellow staff members before concluding same. Before making a recommendation to the Commissioner that person will freely discuss the issues with one or a combination of senior assistants to the director, deputy director, the director or one of the assistants to the Commissioner.

In all cases wherein an investigation is completed, a summary report is prepared for the Commissioner. That report contains details as to the subject of the complaint, details of the complaint, results of the investigation, proposed reply to the complainant, proposed recommendation to the body complained against and any other remarks which would be of assistance to the Commissioner in exercising his judgment.

Every report of every complaint investigated prepared by the staff is reviewed by the Commissioner who makes the final decision thereon and issues

instructions respecting the substance of the report to be sent to those affected. However, before such reports reach the Commissioner, they are double-checked for accuracy by first the director of the Commissioner's office, and secondly by one of the assistants to the Commissioner. In that way the Commissioner has the utmost of confidence in and dependency on the input given to him by his staff before making a final decision. The screening process by the director and assistant to the Commissioner also affords them an opportunity of monitoring the performance of the staff and where necessary effecting improvement and/or replacement.

The majority of staff responsible for processing complaints are lawyers trained in Ombudsman functions. However, there are also those trained in the field of social work and accounting. In the reporting period September 27, 1976 to September 12, 1977, 5,542 complaints were received. At the beginning of the reporting period 3,319 complaints were still under investigation. Of the total complaints in process during the period, 5,495 were completed. Of that number 4,539 were actually investigated which resulted in 2,115 (46.6%) considered justified. It is extremely difficult to draw any real conclusions from these statistics and patently unfair to make a real comparison of performance with that of the Ontario Ombudsman's office. No doubt a large portion of those complaints were processed and completed due substantially to the resource available from the State Comptroller's office.

In any event the Committee was most impressed with the Israeli office. The pressures of the combined offices (State Comptroller and Commissioner), have required him to organize, ration and invest his time and that of his staff's time to gain maximum return. With the extraordinary personal qualities he brings to the office, he has produced an "Ombudsman" operation unique in the world.

The entire office (State Comptroller and Commissioner) is quite large and highly organized. The structure of the office is influenced by a number of factors including the difficult political realities of the country, the acceptance and performance of the State Comptroller, in all aspects of government activities and the extraordinary qualities of the person. It is a valuable study model for the effectiveness of an office as a direct correlation to the status of the individual in society. It underscores and emphasizes a critical factor that an Ombudsman without the respect of the public, Parliament and the public service is no Ombudsman at all but at best a complaint service of limited value.

(d) United Kingdom – Parliamentary Commissioner

The office of the Parliamentary Commissioner for Administration is staffed substantially with people seconded from the public service. In the opinion of the incumbent Parliamentary Commissioner this is a double-edged sword. On the one hand, the persons have a knowledge and insight into the process of government and the process of decision making by the public service. On the other hand, they bring a certain bias or appear to bring a certain bias to their role. Without exception, his staff has had no previous experience in investigating or related matters. There are no lawyers on the Parliamentary Commissioners' staff.

The Parliamentary Commissioner personally receives and reviews a complaint referred by a member. He also personally sends the initial notice of intention to investigate to the deputy minister concerned and at the end of the process, drafts and finalizes reports, some of which are published verbatim in his annual report.

All complaints wherein a decision has been made to investigate are investigated by his staff in a manner similar to that in Ontario.

The Parliamentary Commissioner demands thoroughness from his staff. This is due in part to the fact that he is on a continuous basis before the Select Committee on the Parliamentary Commissioner wherein it reviews reports individually.

He has an intimate knowledge of each complaint and investigation so that the appropriate report can be drafted in the first instance and laterally that he may assist the Committee. This intimate working knowledge of his complaint is made possible, of course, because of the relatively few number of matters processed in any given year. It remains a matter for speculation how effective the Parliamentary Commissioner would be in his present role should the workload of the office increase in a meaningful way.

(e) Local Commissioners (England, Wales and Scotland)

The offices of the local Commissioners are small by comparison to the others mentioned above. The Commissioners are personally involved in all aspects of Commissioner's functions. They personally receive and review complaints. They investigate or directly supervise investigations and they write all opinions themselves. As stated earlier in this report, this is due largely to the relatively few number of complaints received and the cautious and very thorough approach taken by each of the Commissioners in the performance of their duties.

The local Commissioners have brought to their office both a background and experience in local government matters. This is considered by them to be critical to an effective operation at the local government level. It immediately affords the office some credibility in the eyes of local authorities and makes the task of developing effective working relationships that much easier. It also affords them an insight into the workings of local government against which they can assess the conduct of those governments and react accordingly.

(f) City of Jerusalem

The office of the Ombudsman is quite small, situated within a building, which houses some of the administrative offices of the City. He has a staff of three people, one of whom is a secretary. He has resisted any significant growth of his office. He prefers to maintain a personal atmosphere.

The office processes 700 to 800 complaints per year of which approximately 50% are found justified. Complaints are processed rather quickly; on average, two to four days, three weeks at the latest.

PART IV

RULES FOR THE GUIDANCE OF THE
OMBUDSMAN AND THE EXERCISE OF HIS FUNCTIONS

In Denmark, less than one year after the legislation was introduced in 1952, Directives for the Ombudsman were adopted by the Danish Parliament. These Directives do not have the authority of subordinate legislation. However, the weight of their authority and influence over the Ombudsman is unquestioned. The Directives generally serve to govern the various activities of the Ombudsman necessary to the performance of his functions. Subject to these Directives, the Ombudsman is independent of Parliament.

For example, Section 5 of The Ombudsman Act provides that the Ombudsman shall keep himself informed as to whether persons in the public service are guilty of errors of neglect in the performance of their duties. Article 3 of the Directives expands the definition of errors of neglect to include: pursuit of unlawful ends; arbitrary or unreasonable decisions; mistakes or other acts of negligence.

In Sweden, the rules are embodied in legislation entitled "An Act of Instruction To The Parliamentary Ombudsman". The Act prescribes conduct set

for the Ombudsmen in respect of their duties, organization of the office, the receipt of complaints, office procedures and certain miscellaneous provisions which the Parliament considered necessary to include.

It is significant that in Denmark and in Sweden, at least in recent history, these Directives or instructions preceded the election of the Ombudsman and the organization of the office. They are an integral part of the relationship between Parliament and the Ombudsman and have never in any way been questioned by any incumbent of the office.

Representatives of the two respective Parliaments with whom Committee members conferred were of the opinion that Parliament would not hesitate to amend these Directives swiftly, should the circumstances so require to assist the Ombudsman to conduct himself within the context required by Parliament.

These Directives are, in the Committee's opinion, another symptom of the reality of Ombudsmanship in Denmark and Sweden; they perform their functions at the pleasure of Parliament and within areas clearly circumscribed by Parliament. Ombudsmen are one of a number of tools available to Parliament to effect an improvement in the public service and to initiate discussion for change of unjust or anomalous legislation.

At the Local Commissioner level in the United Kingdom, while it is not specifically set out in the Local Commissioner Act of England and Wales, the Representative Body has undertaken the function of creating rules and procedures to guide the Local Commissioners in the exercise of their functions. An example in point is that the Representative Body, in co-operation with the Local Commissioners, are presently drafting a code of procedure to be adopted by local authorities in processing complaints before the decision is made to refer

them to the Local Commissioner's office. Additionally, the Representative Body has influenced various aspects of the Local Commissioner's investigative procedure.

While this approach is somewhat less formal than Sweden and Denmark, the result is nevertheless just as effective. There is a tacit acceptance by the Local Commissioners that the Representative Body will, in the future, influence and direct performance. While there are no comparable rules in Israel and the United Kingdom respecting the Parliamentary Commissioner, the terms of reference of the respective Committees are broad enough to include recommendations to their respective Parliaments for the enactment of rules.

In Israel, it has never been considered at the State level. When the office of Commissioner was created there was a ready-made operation headed by one of the most respected persons in the country. To subject the man and the office to further rules was, at the time, unnecessary. There is no doubt, however, that the Israeli Parliament will involve itself in the activities of the office should it be necessary.

In the United Kingdom, the Committee has from time to time given informal advice and direction to the Parliamentary Commissioner as a result of enquiries initiated by him. It is generally felt by the Committee that if the circumstances presented themselves its "advice" in other areas of the Commissioner's activities would be given unsolicited.

Just to what extent directives and instructions have influenced the development of the Ombudsmen offices in Denmark and Sweden is impossible to identify.

The fact that those rules were enacted concurrent with the Ombudsman legislation is significant. It demonstrates that Parliament had at the time a clear and precise concept of what an Ombudsman was and what he should do in that particular country. The Ombudsmen knew the "rules of the game" from the beginning. By accepting the office, they accepted the rules that governed the activities of the office.

The rules have been amended or modified from time to time. On each occasion the changes have been preceded by an amendment to the legislation or an extensive study into the performance of the office for a specific period. For example, in Sweden the 1975 Act of Instruction was preceded by an exhaustive review from May 1972 to April 1975, of the office of Ombudsman from 1809 to the time of the study. The study included the principles involved in the functions of the Ombudsman as well as questions of an organizational and practical nature. The conclusions of this study are substantially embodied in the 1975 legislation which included the Act of Instruction.

The jurisdictions of Sweden, Israel and England either prior to the creation of the office or at a critical period in the history of the office, commissioned extensive studies into every aspect of the Ombudsman operation as it related to the system of government in that particular country. It was against the background of those studies and conclusions emanating therefrom that the original legislation was drafted or that new legislation amending the old was created. Therefore, the Ombudsmen in those countries in addition to the statutory instructions, had the benefit of the findings of the particular studies against which they each could interpret their respective Acts and organize and operate their respective offices.

In Ontario the converse has happened. There was no study or similar undertaking, which preceded the enactment of the legislation. Since the

inauguration of the office the initiative to define and interpret the function and role of the Ombudsman has come from him rather than the Legislature. Unless the Legislature formulates its own definitions vis-a-vis the Ombudsman and his office, the relationship which has existed to date between the Ombudsman and the Legislature will never approach that which exists in other countries and that which is generally recognized as the appropriate relationship between an Ombudsman and the Parliament that created him.

PART V

OMBUDSMAN'S "SANCTIONS"

To apply the word "sanction" to the role and the function of the Ombudsman is really a misnomer. In all jurisdictions visited, the Ombudsman does not have the authority to enforce the implementation of any recommendations made by him in a decision or report. Sanction is more of a term coined by the academics to describe the means available to an Ombudsman to persuade, cajole or by other means appropriate in the circumstances, the Parliament whom he serves to require by motion, special act or otherwise that his recommendation be implemented by the government authority against which it has been made.

These means available to the Ombudsman vary from country to country. Some are formally prescribed in the relevant legislation. Others are more informal but equally as effective, developed over a number of years.

An examination of what "sanctions" are available to an Ombudsman also requires a review in some detail of the extent of his function to make reports, decisions and recommendations.

(a) Denmark

Upon the completion of the Ombudsman's investigation into any

complaint and depending upon the issues raised by the investigation, the Ombudsman may do one or more of the following things:

1. He may report to the central or local government authority concerned setting out his findings as a result of the investigation, the conclusions or findings he has made as a result thereof and his own view on the circumstances giving rise to the complaint and the means recommended by him to rectify same. The so-called means are always general in scope and are equivalent to recommendations made by the Ontario Ombudsman.

There is no statutory code limiting the opinions the Ombudsman may come to and likewise, there is no statutory code prescribing the nature and substance of recommendation that can be made. In fact, there is no requirement in the Act or directives that the Ombudsman must find fault before rendering an opinion. In fact, Article 9, paragraph 4 of the directives states that:

"Even if the subject matter of a complaint gives the Parliamentary Commissioner no occasion for action, he may always state his views on the matter to the person whom the complaint concerns."

This unlimited choice of opinions and recommendations to the Ombudsman makes his job much easier when it comes to obtaining the government authority's co-operation. If he is not too demanding in the recommendations he makes, then there is less possibility of a government authority's opposition to his reports. In fact, many of the Ombudsman's recommendations are worded in such a way that the government authority is asked merely to consider or study the possibility of some new action, etc. It is easy to claim a 100% success rate in those circumstances when the government authority reports that it has, in fact, considered his recommendation.

There is no statutory requirement in the Danish legislation for the government authority to implement, accept his recommendation or advise the

Ombudsman as to what steps if any, it proposes to take. Likewise, the Ombudsman has no authority to refer his reports with recommendations to the minister involved, the head of government or parliament itself or any committee thereof.

The extent to which reports and recommendations of this type are carried forward is solely within the discretion of the Parliament's Justice Committee. It has in the past where a particular government authority has shown some reluctance to accept an Ombudsman's recommendation, called the minister in charge before it for an explanation. Notwithstanding that the committee has no authority to require a minister to accept the recommendation, this "informal persuasion" has generally been successful.

The Committee has historically felt a responsibility to the Ombudsman to be supportive of him in these situations recognizing that he has no legal means or rights to seek its assistance or the assistance of Parliament.

2. If during any investigation the Ombudsman discovers major mistakes or any significant dereliction of duty of persons complained against, or if he considers any relevant existing law, administrative regulation or local authority or by-law as the case may be, deficient, he shall report to parliament and as the case may be, the minister in charge or the local authority effected. At the state level, many of these recommendations are presented to the Justice Committee and of course, formulate part of the Ombudsman's annual report. There is no requirement on the Justice Committee to consider any of these recommendations. In fact, they consider only those that are of particular interest to them and within their terms of reference as a committee. To the extent that reports in this category come within the terms of reference of other parliamentary committees, they are appropriately referred.

In this way, the Ombudsman acts as a kind of "law reform commission", to the Justice Committee and the other committees of Parliament.

His reports in this area are considered a valuable contribution to Parliament's continuing efforts to keep legislation in tune to the needs of society.

While the Ombudsman hopes that his reports of this nature are favourably received, there is never any expectation that his conclusions and recommendations contained therein would be implemented. He recognizes his function as a vehicle to alert Parliament to outdated, inappropriate or unjust legislation and is prepared to accept that in the realities of the political arena, not all recommendations are acted upon.

3. The Ombudsman in any case, where he considers it to be appropriate, may direct the Public Prosecutor to conduct a preliminary investigation or, in fact, to institute criminal proceedings or it may direct the appropriate government authority to institute disciplinary proceedings in respect of any conduct complained of. It is significant that neither of these authorities has ever been used by the Danish Ombudsman. The Committee considers this to be a significant omission symptomatic of the restraints placed upon the Ombudsman's authority by Parliament.

Having regard to the Ombudsman's relationship with the press as reviewed under Part II, the Ombudsman's ability to obtain acceptance of his recommendations is assisted greatly to the extent that his reports receive publicity. The Ombudsman's office has been successful in resolving a significant number of complaints at a very early stage. This the Ombudsman attributes in part to the publicity given to certain matters by the press and to the potential that any one complaint may receive front page attention.

Another factor which has contributed to the Ombudsman's "effectiveness" and which has contributed to the degree of support given him by the Justice Committee, is that generally the issues dealt with by the Ombudsman in his

reports and recommendations are matters of common concern to all parties, with an absence of any political overtone or controversial issues. As such, it is easier to marshall support by all members of Parliament for a "common aim": the more effective and just operation of the public service and the legislation that governs that service.

(b) Sweden

When an investigation is completed by one of the Ombudsmen in Sweden, he issues a decision wherein he sets out his opinion on whether the subject matter of the complaint taken by the government authority or official therein contravenes any statute or common law or that the authority or official is at fault or acted inappropriately in any other respect. In such a decision, the Ombudsman may make a recommendation designed to promote uniform and appropriate application of the law in question in the future.

This opinion is forwarded to the government authority and if the Ombudsman considers it to be of special or unique importance, he will include it in his annual report. Where the circumstances warrant, the Ombudsman is also required in his capacity as supervisor of legislation to submit a report to the Swedish Parliament or to the Government recommending amendments to legislation or other steps to rectify any deficiency in existing legislation.

As reviewed earlier, the Ombudsman still has authority to prosecute an official or to recommend that appropriate disciplinary proceedings be taken. That notwithstanding, all Ombudsmen are clearly of the view that their main weapon in the future will be decisions containing admonitions or criticisms of officials found at fault and reports to Parliament or Government seeking amendments of relevant legislation.

The Swedish Ombudsmen are more limited in the nature and type of conclusions they must come to before any decision or report can be made to the

government authority or to Parliament as the case may be. There is clearly an obligation, with the exception of legislative review, to find fault in the activity giving rise to the complaint or investigation.

There is no requirement on the Ombudsman to recommend that any steps be taken to rectify or redress any injustice caused by the act or omission in question. Because of this general concern more for the circumstances giving rise to the complaint, the decisions and any recommendations contained therein are general in scope. The purpose is to influence the conduct of the civil servants in the performance of their legal obligations in such a way as to eliminate the basis for similar complaints in the future.

The Swedish Ombudsmen have no access to the head of government, Parliament or any committee thereof respecting any opinion or recommendation which has for any reason been rejected or ignored by a government authority. While the Ombudsmen report almost a 100% success rate in acceptance of their decisions by government authorities, there is increasing concern that the diminished powers resulting from the 1975 legislative amendments, will ultimately result in a perception by the government authorities, the press and the public that the Ombudsman is less effective.

The Swedish Constitutional Committee indicated that where the circumstances warranted, it would call a head of a government authority before it to discuss why a particular decision of an Ombudsman was not accepted. This situation was so rare that no instance could be recalled. This discussion would not include comments by the head of the government authority critical of the Ombudsman's operations. The jurisdiction to criticize the Ombudsman's operation is reserved solely to the Committee. However, such criticism has never occurred. It probably would result in the Ombudsman's immediate resignation or dismissal.

The effectiveness of the Ombudsmen in respect of the decision he renders is in the opinion of some a "hangover" from the esteem within which the office was held as a prosecutor of the civil service. No one confronted with an admonition from a person charged with the authority of prosecuting him in certain circumstances, would dare question the decision or fail to implement any recommendation contained therein. To the extent that these decisions are read by the public service at large, they would have the effectiveness of a precedent or code of conduct.

With respect to reports submitted to Parliament as to the amendment or rectification of any existing legislation, the Justice Committee serves as the vehicle to consider these issues and reports appropriately to Parliament. There is no requirement that the Ombudsman's suggestions be implemented or, in fact, that the Justice Committee actively considers same. Likewise, there is no real expectation on the part of the Ombudsman that his decisions in this category will ultimately result in amended legislation. Since 1975, the recommendations contained in these reports have been accepted and acted upon in approximately 50% of the cases.

The role of the press in Sweden is extremely important in contributing to the office's effectiveness. In certain instances, investigations are monitored continuously by the press and any decisions rendered are given where necessary, wide publicity. The pressure of scrutiny by the press in this way makes public officials affected more sensitive and willing to accept any recommendations that the office might make to rectify a situation as soon as it comes to their attention.

(c) Israel

To appreciate the effectiveness of the Israeli Commissioner, one must retain the prospective that the Commissioner is also the State Comptroller

and that generally the public and the public service do not distinguish the authority of one office from the other. The legislation supports this blending of rules as describing the State Comptroller as acting in his capacity of Commissioner for Complaints From the Public. In addition, the Commissioner is required to carry out his functions with the assistance of a special unit in the State Comptroller's office to be known as the office of the Commissioner for Complaints From the Public. The man is the same, the office is the same and the influence is the same.

The Commissioner is more prescribed in the findings he must make in respect of a complaint before a report with recommendations can be made. He must as a result of his office's investigation make a finding that the original complaint is justified as being either contrary to law, done without lawful authority, contrary to good administration, involving too inflexible an attitude, or causing flagrant injustice.

In those circumstances, he must notify the complainant, the person or body against whom the complaint is made of his findings with reasons. He may make recommendations for the rectification of the matters revealed by the investigation setting out a time limit for such action to be taken.

Where those recommendations are made, the person or body against whom the complaint is made shall within the time stipulated by the Commissioner's report inform him of the steps which have been taken. If that is not done or if the steps reported do not satisfy the Commissioner, he may bring the matter to the knowledge of the minister concerned or to the knowledge of the State Control Committee.

In the latter respect, because the State Control Committee has the mandate and responsibility of reporting to the Parliament with appropriate recommendations, the Commissioner has indirect, at least, access to Parliament

in respect of recommendations made by him and rejected by the authority in question.

To date and unsurprisingly the Commissioner has enjoyed remarkable success in having the recommendations made by his office implemented by the authority in question. However, should any authority demonstrate reluctance, he would not hesitate to ask the Committee to act appropriately. The Committee as well having regard to its general mandate would not hesitate to call a head of a government authority in question before it to "show cause" why some matter has not been implemented.

However, because of his status and stature, he has to date had very little need for assistance from the State Control Committee or Parliament in having his recommendations implemented. This is an example of how effective an operation can be when built upon a foundation of respect for the office, respect for the individual and excellence of performance.

(d) United Kingdom – Parliamentary Commissioner

The Parliamentary Commissioner's ability to require that a situation be remedied is limited by his ability to conclude after a matter has been investigated that the act or omission complained of has caused the person in question injustice in consequence of maladministration. Nowhere does the Act define maladministration. To that extent the decisions of the Parliamentary Commissioner referable to the conduct in question is subjective. Experience of the office has provided him with an informal catalogue of types of actions which have been considered maladministration, including "bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude, arbitrariness". Where the Parliamentary Commissioner classifies conduct within his definition of maladministration he must report to the member of the House of Commons who

referred the matter to him, to the principal officer of the department or authority concerned, to any other person who is alleged in the relevant complaint to have taken or authorized the action complained of and to the complainant.

These reports generally perform two purposes. After summarizing the results of the investigation and where appropriate, they contain recommendations to remedy the specific injustice. Secondly and more appropriate, they draw attention to the issue raised by the individual case and contain suggestions for approving the administrative practice generally.

Where the Parliamentary Commissioner makes a recommendation to the department concerned to remedy the particular injustice and where within a period of time that department has not or will not act, the Parliamentary Commissioner may submit a special report to the House of Parliament. That report, having regard to the terms of reference of the Select Committee on the Parliamentary Commissioner would be immediately referred to it for consideration and reporting back to the House. There is no provision in the U.K. legislation for the Parliamentary Commissioner to refer the matter directly to the head of government.

The Parliamentary Commissioner would have the support in respect of a particular recommendation from a Select Committee of the House of Parliament and from an individual member who originally referred the complaint. Reports received from the Parliamentary Commissioner by government authorities are therefore considered in this light. While there is no requirement that they take steps within a period of time, they are always on notice that their conduct will be scrutinized and commented upon both in the House and during a proceeding of a Select Committee thereof.

The Parliamentary Commissioner's ability to follow up on recommendations is assisted by the Select Committee in its proceedings. Any cases

contained in the Parliamentary Commissioner's annual report which are considered in detail by the Committee are primarily for follow-up purposes to obtain the particular government department's undertaking or assurances either that the injustice has been remedied or that steps will be taken with reasonable dispatch thereafter. Thus, any recommendation made by the Parliamentary Commissioner whether implemented immediately or not is capable of scrutiny and follow-up by that particular committee. This too has a profound influence on the overall effectiveness of the Commissioner's operations.

(e) Local Commissioners – England, Wales and Scotland

There are no means available to the local commissioners to seek the support of a public body, the equivalent to Parliament or otherwise, to monitor the implementation of their recommendations.

There is, however, potentially a very effective device built into the legislation which puts the reports of the local commissioners and the local authorities responsible thereto in the public eye.

When the local commissioner's investigation of a particular complaint has been completed, he or she shall send a report of the results of that investigation to the authority in question. There is no statutory requirement that the local commissioner include any recommendations in that report. In fact, as of January 1978, the local commissioners in England advised the Committee they have yet to make a recommendation in any reports submitted to local authorities.

Not later than one week after the local authority receives a report, it shall give notice in the local newspapers and by other appropriate means that the report will be made available at the offices of the local authority for public viewing.

If the report contains an opinion by the local Commissioner that injustice has been caused to the complainant in consequence of the maladministration, the report shall be laid before the public authority and it has a duty to consider that report and notify the Commissioner of any action it has taken or proposes to take.

If the local authority fails to notify the Commissioner of any action taken or if it proposes not to take any action, the Commissioner shall make a further report setting out what he or she understood to be the reasons for the local authority not responding favourably. The authority must with that report publish notice in the paper and otherwise appropriately and thereafter make the report available for inspection.

Therefore, the extent to which the local Commissioners are effective depends solely upon the sensitivity of the local authority to public scrutiny. All of the local Commissioners report that to date, the press has been supportive of any reports made public and generally the local authorities have in some way responded. However, it is impossible to measure the true effectiveness of the local Commissioners so far since there have not been any recommendations for action made, at least in England.

The entire procedure appears to have the potential of great effectiveness especially at the local municipal level. If the scrutiny by the English press is in any way similar to the scrutiny of the Ontario press over local government matters, reports of this type would be given a lot of attention and support.

(f) City of Jerusalem

The Ombudsman has no means of enforcing any recommendation he may make. However, the relationship he has with the public service and his ability to take a matter directly to council has resulted in a high rate of acceptance of implementations of his recommendations.

Another reason for his success may be that he strives to be moderate in his approach to solutions recognizing circumstances of the public service on the one hand and the needs and interests of the citizen on the other.

In summary the extent to which opinions of an Ombudsman are accepted and recommendations contained therein are implemented, is dependent on the aggregate influence the following factors have on the government authority in question:

1. objectivity, accuracy and precision of reports;
2. fairness of recommendation made;
3. respect for Ombudsman's operation;
4. public awareness of Ombudsman's opinion and recommendation;
5. support of Ombudsman by Parliament;
6. scrutiny given by Committee of Parliament to response to Ombudsman's opinion and recommendation;
7. reputation of Ombudsman.

These factors combine and exist in a delicate balance to influence the conduct of the public service, specifically and generally. Where any one of the factors becomes discredited or discarded for any reason, the overall effectiveness of the Ombudsman may be completely destroyed. This creates an obligation on everyone who contributes to these factors, to maintain the highest standards at all times and to remove, as quickly as possible, anything that may weaken those factors.

PART VI
LOCAL GOVERNMENT

All of the countries visited by the Committee have Ombudsmen with jurisdiction over local government matters. The two Scandinavian countries were given jurisdiction some time after the inauguration of the office. Israel, England and Scotland either created the position solely for the purpose of processing local government matters or gave the state Ombudsman concurrent jurisdiction from the beginning.

The effectiveness or the potential for effectiveness of a local Ombudsman is far greater in Israel, England and Scotland than in the two Scandinavian countries. Experience in the latter two countries has shown that legislation at the state level is not appropriate to deal with local government matters. In all countries visited, there is a recognition that the system of local government is substantially different from that of central government. This is a conclusion the Committee believes to be equally applicable to Ontario. To demand the same standards of performance of local municipalities against the same criteria as is expected under the Ombudsman Act of central or provincial authority would be a mistake and would only serve to heighten the resistance that local governments would have for the establishment of such an office.

(a) Denmark

In 1962, the Danish Ombudsman Act was amended giving the Ombudsman jurisdiction over local government administration in limited circumstances. The jurisdiction extends to persons in local government service insofar as their activities concern matters wherein recourse to a central government authority in respect of the activity in question is provided for by legislation. Activities of

local government councils acting as a whole are excluded from jurisdiction unless the Ombudsman decides to investigate a matter involving the violation of a person's fundamental legal rights. Both the Ombudsman Act and the directives issued to the Ombudsman require him in the exercise of his authority over local governments, to take into account the special conditions under which local governments operate. That is, the Ombudsman, when investigating and before formulating any conclusions referable to his investigation should have regard for the fact that local government authorities may not be as sophisticated or experienced in the administration of their duties as are their central government counterparts.

The expansion of jurisdiction in 1962 did not contribute to any increase in workload by the Ombudsman or to an increase of his staff. This is attributable to two main factors:

Firstly, the fact that this expanded jurisdiction was not publicized to any great degree throughout the country. The Ombudsman took few steps to promote complaints from that source or to develop meaningful working relationships with the various local governments.

Secondly, the distinction between administration at the state as opposed to the local level in Denmark is largely artificial. That is, a great number of decisions required of local authorities are capable of appeal to a central government authority. Before the jurisdiction was expanded, the Ombudsman was indirectly dealing with local government matters through his investigation of complaints referable to the processing thereof at the central government level. Now the Ombudsman is authorized to investigate these activities one stage earlier.

In the year 1976, of the 742 cases investigated by the Ombudsman's

office, 40 were concerned with local government matters. Of that number, nine resulted in recommendations.

The Ombudsman has not enjoyed the same success in having his recommendations accepted at the local government level as he has at the state level. There is no recourse in the legislation available to him to bring a particular matter that has not been implemented to the attention of the local government concerned. Another reason for the relevant ineffectiveness of the Ombudsman at the local government level is the budgetary restraints and its effect on his ability to travel throughout the country. That circumstance has hindered his ability to become identified at the local level. Further, he strongly objects to any advertising of his office as a check against the bad administration. An advertising campaign along those lines in his view would create a preconception of the quality of the administration. He believes that the workload of his office would double in short order if it were advertised, especially at the local level. Because of the firm reins placed by Parliament on his budget, this is something he is neither prepared or able to do.

(b) Sweden

The Swedish Ombudsmen were given jurisdiction over local governments in 1957. The statute provides that the Ombudsmen shall exercise supervision over local government authorities and officials and other employees of those authorities. The Act contains a provision similar to that of Denmark by requiring the Ombudsmen when supervising municipal authorities to have regard for the unique circumstances of municipal governments and the autonomy within which they perform. That is, they are not to be too harsh in judgment in respect of the authorities. There is a recognition at the state level that such persons generally lack the experience, etc. of professional civil servants and in the main, are private citizens performing public functions, sometimes on a temporary basis.

They do not have jurisdiction over the conduct of the municipality's own affairs unless the conduct amounts to criminal or gross negligence. Generally, the jurisdiction is confined to the conduct of local authorities and their employees in the performance of obligations required by statute.

From the beginning, the office was met with opposition from the various local governments. It was felt the office was interfering with the tradition of the system of local self-government present in Sweden for so many years. In some ways, it has never overcome this opposition and this is reflected in the significant difference in the office's handling of this type of complaint. They are treated less formally, the attitudes towards conduct are more lenient, the opinions and admonitions are less demanding and the follow-up is non-existent.

Because local governments were not steeped in the traditional relationship with the Ombudsmen nor historically were they subjected to the authority of prosecutor, they are treated with significantly less respect and given less co-operation than at the central level.

In some respects the different relationship fostered by the Ombudsmen with local municipalities is deliberate. They do not want to appear as available to persons with complaints of this nature nor do they wish to publicize their jurisdiction. If either of these were done, they would be drowned by complaints.

The Committee does not agree with the reasons given by Denmark and Sweden for differentiating between the activities of municipal employees as opposed to state employees. Nor does the committee believe that those reasons apply to Ontario public servants. In the Committee's opinion, there is merit in differentiating the standard of conduct, one from the other. There are many

reasons why a standard of performance cannot be the same. Any legislation providing for jurisdiction at the local government level must recognize this differentiation.

In the Committee's opinion, a state Ombudsman qua Ombudsman cannot effectively operate at the municipal level. This is due in part to the perceived intrusion of a state Ombudsman into the affairs of local authorities. Generally, local authorities view the conduct of Provincial authorities with suspicion. To give the Provincial Ombudsman authority over local authorities would have the potential to compound that suspicion.

The Committee has concluded that in the two Scandinavian countries, the realities of economic and human resources, have dictated that complaints from the local level are not given the same treatment as with the state agencies. Even if the Ombudsman wished to afford them the same treatment, they probably would not be given the increased fiscal resources so to do. It is significant that of the annual budgets in Denmark and Sweden, approximately 10% thereof goes to processing complaints at the local government level. All of this supports the Committee's conclusions that expanding the Ontario Ombudsman's jurisdiction to local government levels would at the very least increase his workload by one-third. Measured against the background of the office's policy of publicizing the office in Ontario and travelling to the various parts of Ontario, this estimate is probably low.

(c) Israel

Israel is entirely unique in that within the City of Jerusalem and at least two other large urban centres within Israel (Haifa and Tel Aviv), there are two Ombudsmen operating with concurrent jurisdiction. That fact does not appear to have had any significant influence on each office's effectiveness,

except for the perception of a competitive factor. The relevant state legislation provides that complaints may be made to the Commissioner against every local authority. This includes all municipal governments within Israel, being cities, local counsel, rural counsels, any services provided by those counsels, such as electricity, water, sewage, ambulance, firefighting, police.

It should be noted that in his capacity as State Comptroller, Dr. Nebenzahl also has the jurisdiction to inspect and report upon the fiscal activities of local authorities. Therefore, the comments referenced earlier in this report as to the "built-in aspect" of the office's effectiveness apply to local authorities as well. The relationships were already established, their reputation and respect for the office were already in place before the Commissioner's office was created.

That notwithstanding, the Commissioner has selected people on his staff with background and experience in municipal matters who devote most of their time to processing these type of complaints. Also, the office is able to draw out upon the resource of the State Comptroller's office to the extent that it is experienced at local authority levels. The office does act less than formally in its dealings with local municipalities. Members of the staff assume more of a role of mediator to effect a compromise to the situation giving rise to the complaint rather than formally recommending that certain steps be taken. If, however, that course of action is unsuccessful, then the more formal procedures are adopted. The office is effective in this role, no doubt due in part to the public recognition and respect for the office as previously described. Of the 5,877 complaints received during the reporting period 1976/1977, 562 related to municipal matters. Of that number, the majority related to local authority services. The remainder came within the category of local authority levies and taxes.

The City of Jerusalem, after the unification of the City in 1967, appointed its own municipal Ombudsman. He is part of the civil service and to that extent is one of the world's only public service Ombudsmen.

He derives his authority directly from the city council. His authority is somewhat imprecise and undefined. However, he works as a representative of the city council to afford residents of the City the opportunity of voicing their complaints for whatever reason relating to the service offered by the City. He endeavours by persuasion, or other appropriate means, to effect a resolution of the matter amicable to all.

He is not allowed to inquire into any complaint unless beforehand an inquiry was made by the department against whom a complaint has been made. He is unlimited as to the subject matters of complaints he can receive so long as they relate to the performance in some way by the city's civil service.

There is no required procedure to process these complaints. If they are minor in nature he will resolve them by phone. If they are major he will speak to all individuals personally and thereafter make his assessment of the matter and where appropriate, make recommendations to the department in question. He has ultimate authority if his recommendations are not implemented to go to the Mayor or the City Council who may or may not accept or adopt his suggestions. So far he has had very few instances where this has been necessary.

His workload runs between 700 and 800 cases per year of which he finds approximately 50% to be justified. He has a staff of three people including a secretary and one investigator.

He has resisted expansion of his office relying more upon the personal approach. This of necessity imposes limitations on his ability to serve a number of people. He credits the success of his office to the moderate approach he

adopts. Also the fact that he is a person with a knowledge and understanding of the mechanics of municipal government with practical experience in various departments thereof has afforded him the unique abilities to get to the heart of matters quickly and effect a resolution appropriate in the circumstances. He appears to have brought to his job both a spirit and sensitivity as to what the citizen feels towards and expects of his or her local government and so far has been most effective in carrying out his mandate.

The formalities of this office were not as important to the Committee as was the concept of a City Ombudsman. Here, within a complex and often troubled city, a member of the public service has been effective in receiving complaints from the public, investigating them as he considers appropriate and where necessary to effect a resolution of the citizen's problem.

While the Committee is not necessarily considering a recommendation that Ombudsmen be created at the City level, it is persuaded that anyone performing Ombudsman functions at that level must have a thorough knowledge, experience and understanding of the workings of local government and of the aspirations of citizens in respect of that government.

(d) Local Commissioners - England and Wales

The Local Commission was created in 1974 against the background of a strong system of independent local government. There was strong and vocal opposition to the creation of this office. It was considered somewhat as an imposition by central government into the realm of local government affairs.

There was no apparent reason for a multi-person concept except the anticipation that the complaints received by the office would be too numerous for one person to handle.

Those appointed to the Commission had extensive experience and

understanding of local government affairs and had previously demonstrated abilities at that level.

Mainly due to the opposition expressed by local governments, the approach of the office has to date been very cautious and thorough. The Commissioners have taken great pains to conduct absolutely thorough investigations in respect of each complaint and their reports have been unquestionable with respect to accuracy, detail and sound judgment. The intention, of course, is to establish in the early days of the office a credibility with the local governments which the Commissioners consider critical to any long term success of the office.

The function of the Local Commissioner has strong parallels to the function of the Parliamentary Commissioner. When a member of a local authority states on behalf of a complaint that some action taken by the local authority has caused injustice in consequence of maladministration the Local Commissioners may investigate.

In addition to the condition precedents set out above, the local authority against which a complaint has been made must previously have had the complaint brought to its attention and have been afforded a reasonable opportunity to investigate same and respond. The office of the Local Commissioner is truely a last resort.

The abilities afforded to the Local Commissioners after an investigation has been completed are fully set out under Part V. That notwithstanding, the effectiveness of the office rests solely upon the public awareness, public pressure and credibility of the office in the eyes of the local authority.

The Commissioners recognize that they are in an uphill battle for recognition, acceptance and expanded effectiveness. They have chosen the route

of careful pragmatism with respect to their investigations, their reports and the establishment of their relationships with local authorities. They are conscious of the fact that if their reports are absolutely accurate and thorough the authority will not be able to avoid action or justify any avoidance of action on any substantive grounds. They are building block by block the foundation of the Commission's effectiveness and credibility with local authorities.

The influence and potential for influence over the Local Commissioners by the Representative Body is quite extensive. Local authorities apparently to date have not hesitated in voicing their criticism of the fact of a Commissioner's investigation or in respect of some procedure adopted by a Commissioner in the course of that investigation. Whenever a matter of that nature is discussed with the Commissioners by the Representative Body, the Commissioners have adopted a quiet diplomacy giving way to the wishes of the Representative Body which are in effect the wishes of the local authority concerned.

The Commissioners are not entirely happy with this relationship but they are realistic. They see their ultimate success in winning over local authorities gradually so that in the future the impact of the Representative Body on the operation of the office will be minimal. In the meantime, the length of time taken to process complaints (six months on the average) is unduly long and it limits the effectiveness of the office in resolving problems, at least in the eyes of the public. It also hinders the office's ability to deal with any immediate problem although having regard to the chain of referral of complaints, complaints requiring immediate action will probably never be within the portfolio of Local Commissioners.

(e) Local Commissioner - Scotland

The Local Commissioner was appointed, on a part-time basis, pursuant to the Local Government (Scotland) Act, 1975. He formally took office on January 1, 1976. The legislation was modelled on the Local Government Act of England, 1974. Accordingly, the nature and substance of the Commissioner's authority is basically the same as in England and Wales.

This is subject to one exception. In Scotland there is no Representative Body with whom the Local Commissioner confers to the extent that his colleagues are required to in England and Wales. The legislation created a Designated Body for Scotland which function has been to date limited to receiving the Commissioner's two annual reports and to approving his budget annually. The Commissioner has effectively been left to his own resources to formulate his procedures and develop working relationships with local governments in Scotland.

Since January 1, 1976, the workload of the office has increased to the point where the Commissioner now devotes all of his time to office affairs. The legislation has not yet been amended to reflect this fact.

The Commissioner is a trained solicitor. He has had extensive experience in local government matters since 1948. This background has assisted him in developing satisfactory working relationships with chief officers of local authorities in Scotland.

The average duration to fully process a complaint is six months. This is longer than the Commissioner would like. However, he has recognized a need, in the formative stages of his office, to proceed with great thoroughness and caution until he has gained the confidence and support of local governments.

The concept of the offices is important for purposes of consideration of an Ombudsman over local governments in Ontario. They demonstrate that it is important for local governments to be "monitored" by local government Ombudsmen. The process of government is different; the circumstances giving rise to actions are different and the consequences of those actions are different. All of those factors cause the Committee to conclude that the Ombudsman should be different - different from the Provincial Ombudsman.

The Committee has concluded that the concept of an Ombudsman is applicable to local governments in Ontario. THE COMMITTEE RECOMMENDS THAT THE FUNCTION OF OMBUDSMEN TO LOCAL GOVERNMENTS SHOULD NOT BE PERFORMED BY AN OMBUDSMAN WHO HAS JURISDICTION OVER PROVINCIAL OR CENTRAL GOVERNMENT ORGANIZATIONS. (1)

What the form or structure of that office or offices of a local Ombudsman might be, whether it be one or more provincially appointed Ombudsmen, or whether local municipalities or authorities be empowered to set up an Ombudsman as they saw fit, would in our opinion be a matter for further study by this Committee or other appropriate bodies. Input from those most directly affected is essential before that question can be resolved. To do otherwise would only serve to foster an immediate distrust and opposition by local governments in Ontario.

PART VII

BUDGET

(a) Denmark

The Ombudsman prepares and submits his budget to the Presidium of the Parliament. The report is considered by the Presidium which consists of five

members and then referred to the Administrative Committee of Parliament, being 17 members (all-party representation). That Committee, after due consideration of the budget then makes a recommendation for approval or otherwise to Parliament as a whole. The budget averages between 3.5 and 4 million Danish Krones (approximately \$650,000). This has risen by approximately 750,000 Krones from the operating year 1974-1975. The sole reason for the increases since that time has been the rising expenses attributable to the operation of the firm of which greater than 70% consists of wages. There has not been an expansion of the office's facilities or staff during that time.

Generally, the Ombudsman has not had any difficulty with either the Committee of the House or the Parliament itself in having his budgets approved. This is understandable since any increases are attributed to increases common to all operations of government and largely caused by inflationary factors.

If the Ombudsman wishes to increase his budget beyond the usual amounts relative to increased cost of operation, he must set out in his budget such a request giving the specifics thereof and the reasons therefor. For example, in the forthcoming budget to be submitted to the Administrative Committee of Parliament, the Ombudsman will request permission to hire one more division head, a lawyer, one more investigator and one more clerk or stenographer. The Committee will review the specifics of the request and make a recommendation to Parliament accordingly. If they approve same, it is an approval for the hiring of three additional staff members. Once that approval is given, the necessary funds to pay for the salary of the additional persons follows.

(b) Sweden

The budget of the Swedish Ombudsman is approved ultimately by the Swedish Parliament. Each year the Ombudsman (the Chief Administrative

Ombudsman) prepares and submits his proposed budget to the Constitutional Committee's sub-committee on the Ombudsman. That sub-committee reviews the budget in detail questioning the Ombudsman where appropriate. The sub-committee has no authority to change the budget in any way but refers same to the Administrative Board of Parliament with a recommended amount. The Board almost invariably concurs with the sub-committee's recommendation.

Thereafter the Administrative Board refers the budget to the Constitutional Committee as a whole. The Committee again reviews the budget and any comments made by the sub-committee and the Administrative Board. Thereafter it reports to the Parliament with recommendations. Invariably its recommendations are accepted. The Committee has the authority to recommend an adjustment in the Ombudsman's budget downward. Thus the vehicle of Parliament with the greatest knowledge and understanding of the Ombudsman's operation makes the greatest contribution to the ultimate decision by Parliament.

There is also a provision for the Ombudsman to submit supplementary estimates during the course of an operating year. These supplementary estimates are submitted directly to the Parliament who then refers them to the Constitutional Committee who ultimately reports to the Parliament with the appropriate recommendations.

In 1971 the annual budget of the office was 4 million Swedish Kronas (approximately \$760,000). In 1976 the budget had grown to 8½ Swedish Kronas (approximately \$1,750,000). The increase in that five-year period has been due almost entirely to inflationary factors and not to any expansion of the Ombudsman's operation.

Any proposal by the Ombudsman to expand his operation is scrutinized very carefully. In fact, the Ombudsman considers that an increase of his

budget for the purpose of expanding his operation would be almost certainly rejected. The special study of the office of the Ombudsman resulting in the report of 1975 was responsible for a cutting back of the Ombudsman's services in the area of inspections and trivial complaints principally as a money-saving device.

(c) Israel

The budget of both the State Comptroller's office and the office of the Commissioner for Complaints from the Public is prepared and submitted by the Comptroller to the Finance Committee of the Israeli Parliament. The Committee has the authority to review the budget in detail and if necessary vary it as it considers necessary. The Committee recommends the budget for approval to the Parliament which invariably endorses the Committee's recommendation.

Unlike the Scandinavian jurisdictions and to some extent England wherein the respective Parliaments and Committees thereof are very reluctant to grant any increase in the budget the effect of which would be to expand the Ombudsman's operation, both the Finance Committee and the Israeli Parliament are continuously urging the Commissioner to accept more money than he has proposed in his budget. So far, he has rejected these increases, principally because he recognizes a lack of further qualified people in the country to perform the service at the level he expects. Also he does not wish to outbid government departments for qualified people who may be needed more in other areas.

The last budget approved by Parliament for the operation of both State Comptroller and Commissioner for Complaints from the Public consisting of approximately 500 people, was \$7 million. Of that amount approximately 10% or \$700,000 is attributable to "Ombudsman operations". It must be recognized

that the salary levels in Israel are significantly lower than Canada. For example, the salary of the State Comptroller and Commissioner for Complaints from the Public is approximately \$12,000.

There were no figures available to the Committee respecting the budget of the Ombudsman for the City of Jerusalem. The cost of his office however, is borne by the City.

(d) United Kingdom - Parliamentary Commissioner

The procedure for approving the Parliamentary Commissioner's budget is the same as that undertaken by Parliament in approving the budgets of all government departments. That is, it is submitted to Parliament with all government estimates, debated and ultimately passed. During the process it is considered by the Estimates Committee and the Public Expenditures Committee. The budget for the last operating year was £750,000 or approximately \$1.5 million.

The office has remained constant in size since 1967 and there is no present plan by the Parliamentary Commissioner to expand his office during his tenure. As such, the issue of budget approval is not a very great concern to the Parliamentary Commissioner. The budget is ultimately approved with increases from the previous fiscal year being solely due to the inflationary forces which are confronting all government departments. He has yet to be confronted with the suggestion that the office cut back its resources and would frankly resist same.

(e) England, Wales and Scotland - Local Commissioners

The budget of the operation of the Local Commissioners is submitted to and approved by the Representative Body appointed under the Local Government Act, 1974 of England and by the Designated Body for Scotland appointed

under the Local Government (Scotland) Act, 1975. The costs of the operation of the Local Commissioner are borne by all of the local authorities to which the jurisdiction of the Local Commissioner extends. It is quite understandable therefore that the approving bodies have closely scrutinized any budgets submitted to date. It is also the view of the Local Commissioners that there would be significant resistance to any attempt to expand the operations in England or Scotland.

In England the Representative Body has to consider before the 1st of November in each year the Commission's financial estimates for the next financial year beginning the 1st of April. The expenditure of the Commission for the year ended March 31, 1977 was £471,241.59. The Representative Body to date has shown some latitude in budgetary matters having regard to the newness of the operation. However, it would not hesitate if it concluded that some request for expenditures were excessive to reduce them. The Representative Body feels strongly that the Local Commissioners ought not to be drumming up business.

Budgets of all Ombudsman operations are ultimately approved by Parliament or at the local government level, the elected local governments. They derive assistance however, from Committees or the like who initially receive the budgets from the Ombudsman, review them in detail and thereafter, make any recommendations to Parliament, etc. as is considered appropriate. Thus the body with ultimate responsibility for approving the budget is assisted and guided by a body who has the most knowledge, experience and insight into the operation of the Ombudsman's office and who is accordingly, uniquely suited to scrutinizing all aspects of the Ombudsman's budget.

The Committee is of the opinion that this procedure for approval of the Ombudsman's budget should be adopted in Ontario. IT THEREFORE AGAIN

RECOMMENDS THAT ITS ORDER OF REFERENCE BE AMENDED TO PROVIDE
THAT IT RECEIVE AND CONSIDER THE ESTIMATES OF THE OMBUDSMAN
AND REPORT THEREON TO THE LEGISLATURE WITH SUCH RECOMMENDA-
TIONS AS THE COMMITTEE DEEMS APPROPRIATE. (2)

APPENDIX "A"

COMMITTEE'S ATTENDANCES WITH PERSONS IN FOREIGN JURISDICTIONS

A. DENMARK

Mr. Lars Nordskor Neilsen	Danish Ombudsman
Mr. Torben Plessing	Assistant to Mr. Neilsen
Mr. Ole Espersen	Chairman, Standing Legal Committee of Folketing
Mr. Hagen Hagensen	Vice-Chairman, Standing Legal Committee of Folketing
Mrs. Bloc	Secretary (Counsel), Standing Legal Committee of Folketing
Mr. Erik Ninn-Hansen	Member of Folketing (Danish Parliament)

B. SWEDEN

Mr. Ulf Lundvik	Chief Ombudsman
Mr. Anders Wigelius	Ombudsman
Mr. Karl-Erik Uhlin	Ombudsman
Mr. Leif Ekberg	Ombudsman
Mr. Olle Svenson	Chairman, Riksdag Committee on the Constitution
Mrs. Britta Hammarbacken	Member, Committee on the Constitution
Mr. Bertil Fiskesjo	Member, Committee on the Constitution
Mr. Yngve Nyquist	Member, Committee on the Constitution
Mr. Per Dahlman	Secretary (Counsel), Committee on the Constitution

B. SWEDEN (Cont'd)

Mr. Bengt Birgersson **Deputy Secretary (Counsel),
Committee on the Constitution**

C. ISRAEL

Dr. Itzhak Ernst Nebenzahl State Controller and Commissioner
for Complaints from the Public of Israel

Mr. G. Avner Director, Commissioner's Office

Mrs. M. Bamberger Assistant to Dr. Nebenzahl

Mr. Y. Salant Director of Commissioner's Office

Mr. J. Schiff Assistant to Dr. Nebenzahl

Professor Ephraim Katzir President of Israel

Mr. Izhak Shamir Speaker of Knesset

Mr. Shmuel Toledano Chairman of Knesset

Mr. A. Amorai Member, Committee for State

Mr. E.G. Badian Member, Committee for State

Member Committee for State
Center Affairs

Member, Committee for State Control Affairs

Control Affairs

Control Affairs

Control Affairs

C. ISRAEL (Cont'd)

Mr. A. Berkner	Secretary of Committee for State Control Affairs
Mr. N. Lorch	Secretary General of the Knesset
Mr. A. Gefen	Inspector General, Ministry of Finance
Mr. Zvi Ron	Ombudsman, Municipality of Jerusalem
Mr. Yoram Aridor	Deputy Minister, Prime Minister's Office
Mr. Arnon Gafny	Governor, Bank of Israel

D. ENGLAND

Sir Idwal Pugh	Parliamentary Commissioner for Administration and Health Service Commissioner
Mr. G. Weston	Deputy to Sir Idwal
Members of Select Committee of the Parliamentary Commissioner for Administration	
Mr. Anthony Buck, Q.C.	Chairman
Mr. Ivor Clemitson	
Mr. John Cope	
Mr. Anthony Durant	
Mr. Ian Gow	
Mr. David Lambie	
The Baroness Bea Serota	Chairman, Commission for Local Administration
Mr. D. Harrison	Commissioner, Commission for Local Administration
Mr. Dafyd Jones Williams	Local Commissioner for Wales
Mr. Michael Hughes	Secretary to Commission
Association of District Councils - Representative Body	
Sir Duncan Lock	Chairman, Representative Body

D. ENGLAND (Cont'd)

Councillor S.J. Smith

Councillor J.G. Howe Stockport Metropolitan District

Mr. A.H.M. Smythe Member, Regional Water Authority

Mr. G. Havell Assistant Director, GLC

E. SCOTLAND

Mr. Robert Moore Local Commissioner for Scotland

APPENDIX "B"

SUMMARY OF RECOMMENDATIONS

1. The Committee recommends that the function of Ombudsmen to local governments should not be performed by an Ombudsman who has jurisdiction over provincial or central government organizations. (Page 83)

2. It therefore again recommends that its order of reference be amended to provide that it receive and consider the estimates of the Ombudsman and report thereon to the Legislature with such recommendations as the Committee deems appropriate. (Pages 88 and 89)



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FIFTH REPORT OF THE SELECT COMMITTEE ON THE OMBUDSMAN

1978

TABLED IN THE LEGISLATIVE ASSEMBLY BY
THE CHAIRMAN OF THE COMMITTEE
MICHAEL N. DAVISON, M.P.P.

2nd Session 31st Legislature
27 Elizabeth II

November 9, 1978

TO:

THE HONOURABLE JOHN E. STOKES
Speaker of the Legislative Assembly
of the Province of Ontario

Sir,

We, the undersigned members of the Committee appointed by the Legislative Assembly of the Province of Ontario on Tuesday, July 12, 1977, have the honour to submit the attached fifth report.

Michael N. Davison
MICHAEL N. DAVISON, M.P.P.
Hamilton Centre
Chairman

Margaret Campbell
MARGARET CAMPBELL, Q.C., M.P.P.
St. George

Anthony W. Grande
ANTHONY W. GRANDE, M.P.P.
Oakwood

John Lane
JOHN LANE, M.P.P.
Algoma-Manitoulin

Gordon I. Miller
GORDON I. MILLER, M.P.P.
Haldimand-Norfolk

Osie F. Villeneuve
OSIE F. VILLENEUVE, M.P.P.
Stormont-Dundas-Glengarry

John Peakins
JOHN PEAKINS, M.P.P.
Victoria-Haliburton

Ed Havrot
ED HAVROT, M.P.P.
Timiskaming

Patrick D. Lawlor
PATRICK D. LAWLOR, Q.C., M.P.P.
Lakeshore

James A. Taylor
JAMES A. TAYLOR, Q.C., M.P.P.
Prince Edward-Lennox

MEMBERS OF THE SELECT COMMITTEE
ON THE
OMBUDSMAN

MICHAEL N. DAVISON, M.P.P., Chairman	Hamilton Centre
MARGARET CAMPBELL, Q.C., M.P.P.	St. George
JOHN EAKINS, M.P.P.	Victoria-Haliburton
ANTHONY W. GRANDE, M.P.P.	Oakwood
ED HAVROT, M.P.P.	Timiskaming
JOHN LANE, M.P.P.	Algoma-Manitoulin
PATRICK D. LAWLOR, Q.C., M.P.P.	Lakeshore
GORDON I. MILLER, M.P.P.	Haldimand-Norfolk
JAMES A. TAYLOR, Q.C., M.P.P.	Prince Edward-Lennox
OSIE F. VILLENEUVE, M.P.P.	Stormont-Dundas-Glengarry
JOHN P. BELL	Counsel to the Committee
ALEX McFEDRIES	Clerk of the Committee

I N D E X

	<u>Page</u>
INTRODUCTION	(II)
PART I - THIRD REPORT OF THE SELECT COMMITTEE	1
PART II - FOURTH REPORT OF THE SELECT COMMITTEE	15
PART III - NORTH PICKERING	16
PART IV - THIRD REPORT OF THE OMBUDSMAN	16
(A) CORRECTIONAL INSTITUTIONS REPORT	17
(B) STATISTICAL ANALYSIS	17
(C) MANAGEMENT STUDY	17
(D) RESPONSES FROM THE OMBUDSMAN TO RECOMMENDATIONS ADDRESSED TO HIM BY THE COMMITTEE IN ITS THIRD REPORT	17
(E) SPECIFIC CASE SUMMARIES CONTAINED IN THE THIRD REPORT WHEREIN ISSUES ARE RAISED REQUIRING A MORE DETAILED REVIEW BY THE COMMITTEE AND SPECIFIC CASE SUMMARIES WHEREIN RECOMMENDATIONS MADE BY THE OMBUDSMAN TO THE GOVERNMENTAL ORGANIZATION IN QUESTION HAD BEEN DENIED	26
(a) Specific Case Summaries Wherein Issues Are Raised Requiring A More Detailed Review By The Committee	26
MINISTRY OF COLLEGES AND UNIVERSITIES	27

	<u>Page</u>
MINISTRY OF COMMUNITY AND SOCIAL SERVICES	28
MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS	29
MINISTRY OF HEALTH	32
WORKMEN'S COMPENSATION BOARD	34
(b) Detailed Case Summaries Wherein Recommendations Made by The Ombudsman To The Governmental Organization In Question Which Had Been Denied	34
MINISTRY OF COMMUNITY AND SOCIAL SERVICES	34
WORKMEN'S COMPENSATION BOARD	35
PART V - FOURTH REPORT OF THE OMBUDSMAN	40
(A) CORRECTIONAL SERVICES REPORT	40
(B) MANAGEMENT STUDY	41
(C) STATISTICAL ANALYSIS	43
(D) BLUEPRINT	44
(E) RENT REVIEW	45
(F) GENERAL SUGGESTIONS MADE BY OMBUDSMAN IN CHAPTER 2 OF THE FOURTH REPORT WHICH HE FEELS SHOULD BE BROUGHT TO THE ATTENTION OF THE LEGISLATURE AND WHICH HE HOPES WILL BE GIVEN CAREFUL CONSIDERATION BY THE GOVERNMENTAL ORGANIZATIONS CONCERNED	49
1. Social Assistance Review Board	50

	<u>Page</u>
2. Workmen's Compensation Board	52
3. Psychiatric Facilities	55
(G) SPECIFIC CASE SUMMARIES WHEREIN RECOMMENDATIONS MADE BY THE OMBUDSMAN TO THE GOVERNMENTAL ORGANIZATIONS HAVE BEEN DENIED	56
PART VI - RULES FOR GUIDANCE OF THE OMBUDSMAN IN THE EXERCISE OF HIS FUNCTION UNDER THE OMBUDSMAN ACT	81
PART VII - AMENDMENTS TO THE OMBUDSMAN ACT	91
PART VIII - EXPANSION OF ORDER OF REFERENCE OF THE SELECT COMMITTEE	92
PART IX - FUNCTION OF THE SELECT COMMITTEE ON THE OMBUDSMAN	94
PART X - COMMUNICATIONS FROM MEMBERS OF THE PUBLIC	99
PART XI - SCHEDULES TO REPORT	
SCHEDULE "A"	101
SCHEDULE "B"	107
SCHEDULE "C"	109
SCHEDULE "D"	114
SCHEDULE "E"	120
SCHEDULE "F"	122
SCHEDULE "G"	124
SCHEDULE "H"	126
SCHEDULE "I"	128
SCHEDULE "J"	130

INTRODUCTION

On Tuesday, July 12, 1977, on motion by Mr. Welch, seconded by Mr. Davis, it was ordered:

"That, a Select Committee of this House be appointed to continue to review from time to time the reports of the Ombudsman as they become available, and, as the Committee deems necessary, pursuant to section 16(1) of The Ombudsman Act, 1975, formulate from time to time general rules for the guidance of the Ombudsman in the exercise of his functions under The Ombudsman Act, to report thereon to the Legislature and to make such recommendations as the Committee deems appropriate.

And that the Select Committee have authority to sit during recesses and the interval between Sessions and have power to employ such staff as it deems necessary and to call for persons, papers and things and to examine witnesses under oath, and the Assembly doth command and compel the attendance before the said Select Committee of such persons and the production of such papers and things as the Committee may deem necessary for any of its proceedings and deliberations for which the Honourable Speaker may issue his warrant or warrants."

On the 20th of February, 1978, the Ombudsman presented his Third Report (April 1977 - September 1977) to the Speaker of the Legislative Assembly.

On May 15th, 1978 the Committee held an organizational meeting wherein its agenda for the consideration of the Ombudsman's Third Report was finalized. On June 22, 1978, Ross McClellan, M.P.P. and George Taylor, Q.C., M.P.P. were replaced by Anthony W. Grande, M.P.P. and James A. Taylor, Q.C., M.P.P. On June 23, 1978, Robert Elgie, M.D., M.P.P. and John Turner, M.P.P. were replaced by Ed Havrot, M.P.P. and John Lane, M.P.P. The Committee wishes to extend its appreciation and gratitude to those former members. Their contribution to the work of the Committee has been most valuable.

On the 24th of July, 1978, the Ombudsman presented his Fourth Report (October 1, 1977 - March 31, 1978) to the Speaker of the Legislative Assembly. The Committee on the 31st of July, 1978 agreed to an agenda for the consideration, during its sittings which ended August 31, 1978, of the relevant matters contained in that Fourth Report.

During the period of the Committee's sittings (July 31, 1978 to August 31, 1978) it held 23 days of hearings, received 35 exhibits and had 49 persons appear before it.

On August 15th, 1978, the Chairman of the Committee received a copy of a letter from the Ombudsman which the Ombudsman sent to the Honourable William G. Davis, Q.C. dated August 15th, 1978 advising of his intention to tender his resignation as Ombudsman on October 9th, 1978. At the writing of this Report, a successor to Mr. Maloney has not yet been appointed pursuant to Section 3 of The Ombudsman Act, although the Cabinet has appointed Mr. Keith Hoilett, of the Ombudsman's staff, as temporary Ombudsman until a permanent successor is appointed on the address of the Assembly.

The Committee wishes to express its appreciation and gratitude to Arthur Maloney for the contribution he has made to the establishment of the

office of Ombudsman in Ontario as an acknowledged and credible means available to the people of the Province of Ontario for recourse in consequence of some "decision, recommendation, act or omission" by the public service in Ontario. He has, with the assistance of his staff, in the span of approximately three years, built and fashioned an operation which is known throughout the Province and, in Ombudsman circles, throughout the world.

It was Mr. Maloney's aim to establish an Ombudsman's office second to none in the world. When one considers Ombudsman offices throughout the world, the Ontario office ranks most favourably. That the people of Ontario are the proud possessors of such an office within a three-year period is admirable testimony to Mr. Maloney's labours.

The Committee is looking forward to meeting and working with the new Ombudsman. It is vitally important for the Ombudsman of Ontario to have a means available to carry on a comprehensive and continuing dialogue with the Legislative Assembly in an organized and effective way. This is in large part, the role of the Select Committee on the Ombudsman.

In its Fourth Report to the Legislative Assembly at page (V) of the Introduction, the Committee stated that:

"the Committee learned that a deep personal respect is necessary to the functioning of the office: a sense, which has not as yet been developed in Ontario, of the dignity and integrity of this office, which can only be engendered and maintained by a mutuality of understanding on the part of the legislature and the government generally towards the office and person of the Ombudsman, whoever that person may be from time to time, and by the

Ombudsman towards the elected members and all others touched by his function.

The Ombudsman Act was passed by the Legislature in 1975. The Bill was given a thorough debate clause by clause insofar as the practical implications of various key sections were concerned. However, there was never, at that time, a clear statement from the Legislature to indicate what role the Ombudsman should play within the system of Government in Ontario or in what context the Ombudsman was expected to perform that role. This is not meant as a criticism but a statement of fact. At the time the Act was introduced there was a lack of understanding of what an Ombudsman was, how an Ombudsman should function in Ontario and significantly, what the implications would be of an Ombudsman functioning in Ontario. Other countries (Israel and England) preceded the creation of the office by a Parliamentary study thoroughly canvassing the significant issues, namely, the necessity of an office and the most appropriate concept of an Ombudsman within the particular parliamentary system."

Further at page (VII), the Committee went on to say:

"This report does not pretend to be the dictionary for the definitions considered necessary nor the exclusive source for the much needed interpretations. Nor is it a panacea

for all the problems confronting the Ombudsman and the Legislative Assembly. It is intended as a starting point to the creation of those definitions and interpretations whereby the Ombudsman can function with certainty and with clear understanding of the expectations required of him and his office by the Assembly. He must be placed in a position where he is not constantly looking over his shoulder, concerned with the Committee's, the Legislature's and the Government's reaction to a particular course of conduct. The sooner these goals are set upon, the sooner the ultimate beneficiary (the people of the Province of Ontario) which the Ombudsman has pledged himself to serve, will benefit.

We do not see these proposed rules, definitions or interpretations as legislative restrictions or impositions on the Ombudsman, but as a means to make more plastic the ongoing good relationship between all parties so necessary to the harmonious, as well as efficient, operation of this valued office. In the spirit of this Report, which is hopefully intelligently conciliatory and designed to unify and not divide, and to enhance and not to diminish, the interdependent autonomy of the office in relation to the Assembly and the Government, these governing principles in their formulation should be arrived at in an open and free consultation with the Ombudsman.

As possibly with no other public office, however independent by statute, the relationship between the Ombudsman and Parliament is perforce and necessarily trusting. It is a unique and delicate flower in any democratic system; and its preservation and growth requires almost infinite and endless care".

The newly appointed Ombudsman will have many benefits not available to Mr. Maloney as he assumed office some three years ago. That person will have the experience of an Ombudsman operation which is three years old; the experience of the Legislature and this Select Committee in observing the office operate for a three-year period; and the discussion by this Committee in its reports and in its review of the operation of the office of the Ombudsman.

Within its terms of reference, this Committee will continue to assist the newly appointed Ombudsman in performing his or her functions as required by The Ombudsman Act of Ontario.

The Committee welcomes and looks forward to a good working relationship with the new Ombudsman. The office is well founded but questions of consolidation and structure remain, and problems of expanded jurisdiction.

As the Committee said at page 53 of its Second Report to the Legislature dated March 28, 1977:

"The Committee believes that the public is best served by the on-going dialogue between the Ombudsman and the Assembly through this Committee, as envisaged by the Legislature when the Act was passed; by the Select Committee under the Chairmanship of Vernon Singer,

Q.C., M.P.P.; and by the Legislature when it appointed this Committee. The essence of the relationship between the Assembly and the Ombudsman does not lie in any legislative definition of jurisdiction, but in good faith, mutual respect, and co-operation, with open and free discussion between this Committee and the Ombudsman."

PART I

THIRD REPORT OF THE SELECT COMMITTEE

RESPONSES FROM GOVERNMENTAL
ORGANIZATIONS TO RECOMMENDATIONS

The following tables summarize certain governmental organizations' responses to the relevant recommendations made by the Committee in its Third Report to the Legislature and the Committee's opinion respecting those responses. Following each of the tables and under the heading of the various governmental organizations, the Committee, where necessary, has commented in more detail.

(A) TABLE OF GOVERNMENTAL ORGANIZATIONS WHICH HAVE
MADE SATISFACTORY RESPONSES TO RECOMMENDATIONS
MADE BY THE COMMITTEE IN ITS THIRD REPORT

(a) MINISTRY OF ATTORNEY GENERAL

Recommendation No. 14

The Ministry of the Attorney General effect a centralized scheme whereby licences that have been suspended for the non-payment of fines may be immediately reinstated upon the payment of those fines.

(b) MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS

Recommendation No. 16

In the event the numbers of complaints increase with respect to the seven year reporting period the Ministry forthwith effect a study on the merits of reducing the period to one which will reduce the degree of hardship while preserving the purpose and substance of the legislation.

Recommendation No. 17

The Ministry of Consumer and Commercial Relations table, during this current session, an amendment to the Vital Statistics Act deleting the present requirement of

registration that the father's name precede that of the mother's respecting the surnames of their children, thus affording the parents the option of choosing the order of the surnames.

(c) MINISTRY OF CORRECTIONAL SERVICES

Recommendation No. 21

The Ministry of Correctional Services undertake a continuing educative program for the administrative staff who issue temporary absence passes so that the regulations can be interpreted as consistently and as equitably as possible over the entire province.

Recommendation No. 22

The Ministry of Correctional Services complete its review of the policies concerning hearings in respect of disruptive behaviour and effect as soon as possible a new policy satisfying the terms of Recommendation #13 of the Second Report of the Select Committee.

(d) MINISTRY OF EDUCATION

Recommendation No. 23

The Ministry of Education forthwith pursue its discussions with the insurance industry and other interested parties for the purpose of developing an appropriate contract of insurance in the indemnity type at a realistic premium which would adequately compensate a pupil for injuries sustained in the case of a pure accident as a result of participation in shop classes and in organized athletic activities.

(e) MINISTRY OF GOVERNMENT SERVICES

Recommendation No. 24

The Ministry of Government Services table appropriate legislation in the Legislature during this current session removing the present restriction on the total current earnings of a provincial superannuate.

(f) MINISTRY OF HEALTH

Recommendation No. 25

The Ministry of Health forthwith formulate procedures in the area of "escorted privileges" of the type and nature of

the procedure presently in force at the psychiatric hospital referenced by Complaint #69 in the Ombudsman's Second Report, for general application in psychiatric hospitals throughout Ontario.

(g) MINISTRY OF HOUSING

Recommendation No. 35

The Ministry of Housing effect amendments to the Ontario Home Renewal Program so as to exclude the requirement of occupancy as a test of eligibility where improvements to the house in question will enable the applicants to take up occupancy in an otherwise uninhabitable dwelling unit.

(h) WORKMEN'S COMPENSATION BOARD

Recommendation No. 27

The booklet or information circular referred to in Recommendations #3 and #4 of the Committee's Second Report be expanded to include a description and explanation of the entire process of Workmen's Compensation in Ontario, and that such booklet be distributed to all persons receiving the Board's Form H1 letter.

Recommendation No. 28

The Workmen's Compensation Board consider whether, in view of Recommendation #26 above, its booklet entitled "Claims Information for Employees + Employers" is no longer necessary.

Recommendation No. 29

The Workmen's Compensation Board complete as quickly as possible its review of its policy regarding disclosure of its files to the claimant personally.

Recommendation No. 30

The Workmen's Compensation Board consider and report to this Committee whether the appeal system as amended will serve to satisfy the substance of the objectives intended by the Board's study group of the one-level system as recommended, such objectives as set out in pages 5 and 6 of Appendix I of the Report and Recommendations to the Commissioners.

Recommendation No. 32

The Workmen's Compensation Board effect changes in its procedures for the recovery of overpayments and that those procedures contain provisions wherein the particular circumstances of the workman is considered and that the arrangements, if any, for repayment of monies be tailored to the workman's particular ability to repay.

Recommendation No. 37

The Workmen's Compensation Board conduct a hearing in accordance with Section 75 of The Workmen's Compensation Act of the matters referenced by Complaint #135 of the Ombudsman's Second Report, exercising all its powers of discretion and equity that the present circumstances of this claimant warrant.

Recommendation No. 39

The Workmen's Compensation Board reconsider the decisions made by it previously respecting the claimant referenced by Complaint #136 of the Ombudsman's Second Report, pursuant to Section 75 of The Workmen's Compensation Act, exercising its power of inquiry to obtain all relevant evidence respecting the nature of and status of the symptoms suffered by this person within the period in question with a view to determining whether the symptoms complained of were caused by the "aggravation by the work incident".

Recommendation No. 40

If the symptoms were caused by the aggravation by the work incident the Board should exercise its powers pursuant to Section 75 in favour of an award to this complainant without requiring the person to engage in the Board's entire process of a new claim.

Ministry of the Attorney General

The Committee commends the action of this Ministry together with the Ministries of the Solicitor General, Transportation and Communications and Consumer and Commercial Relations in presenting a joint submission to the

Management Board of the Cabinet requesting the funding necessary to implement changes in the Motor Vehicle Registration System and to develop a computerized and centralized system for the collection of unpaid fines. The system if implemented will serve to substantially alleviate the concerns addressed by the Committee in Recommendation No. 14 in its Third Report. The Committee urges the Management Board of the Cabinet to provide the funding necessary so that the Ministries affected can implement the changes in the Motor Vehicle Registration System to alleviate the hardships inherent in the present system.

Ministry of Consumer and Commercial Relations

The Committee was advised by the Deputy Minister of Consumer and Commercial Relations that Bill 11, an act to amend The Vital Statistics Act, referenced by Recommendation No. 17, contains a section which would permit registration of a surname with the parents determining the order of the hyphenated surnames. The Bill has been referred to the Standing Committee on the Administration of Justice for consideration. The Committee refers the Standing Committee on the Administration of Justice to Recommendation No. 17 of its Third Report and urges the Committee to give the proposed amendment every favourable consideration.

Ministry of Education

In response to Recommendation No. 23, respecting a more comprehensive insurance coverage for pupils, the Committee was advised that the Ministry is continuing its discussions with representatives of the insurance industry in respect of a policy which will serve to substantially satisfy the provisions of the recommendation. The Committee urges the Ministry to continue these discussions to a satisfactory conclusion and to report to it on the results of those discussions.

Ministry of Housing

The Deputy Minister of Housing informed the Committee that the Ministry has agreed that the regulations governing the qualifications for the Ontario Home Renewal Plan assistance be amended to permit the improvement of a house where such improvement will enable the owner to take up occupancy in what is otherwise an uninhabitable dwelling unit. The Committee understands that the Ministry staff are presently drafting regulations which are expected to be processed in the near future. The Deputy Minister will advise the Committee of the progress of the Ministry's recommendation to the Lieutenant-Governor-In-Council.

Workmen's Compensation Board

In response to Recommendation No. 27 of the Committee, respecting distribution of a booklet describing and explaining the entire Workmen's Compensation process, the Board stated that to notify a workman of his right to appeal and of the entire appeal procedure before any decision had been made on his claim is inappropriate. It is thought by the Board to be psychologically unwise as conveying the impression that an adverse decision could be anticipated and also because it would entail an unnecessary and unreasonable expense in more than 90% of the claims filed. The Board believes it would be more appropriate to provide persons with a booklet or information circular as contemplated by Recommendation No. 27 when an adverse decision had been made in respect of a claim at one of the Board levels. This would result in distribution of relevant information with respect to the appeal process being sent to more persons than presently receive same but less than the total number of claimants as contemplated by Recommendation No. 27.

The Board assisted the Committee in defining adverse decisions by providing it with a definition of such a decision from each of the Claims

Services, Vocational Rehabilitation, Medical Services and Financial Services divisions. The Committee has attached these definitions in Part XI as Schedule "A".

In three of the definitions, the operative word "contrary" is used. These definitions may not include a decision from one of the Board's divisions which, although it confers a benefit on the claimant, does so in a proportion or in an amount which is less than that contended for by the claimant. For example, a decision of an Appeal Board panel granting a claimant a 50% total disability pension may, under the Board's definition, not be an adverse decision since it is conferring a benefit on the claimant. However, if the claimant were contending for 100% disability, it would, in the claimant's view, be less than was sought, thereby giving him some grounds of appeal. Such a decision should also be included in the definition "adverse decision" for the purpose of defining persons who are to receive the necessary information respecting appeal procedures.

The Committee sees the merit in the suggestion that the documentation referenced by its Recommendation No. 27 be sent to those classes of claimants against whom an "adverse decision" has been made. It therefore recommends that the information circular or booklet as referenced by Recommendation No. 27 in its Third Report be forwarded to all individuals against whom an adverse decision has been made at the time they are notified by the Board of that decision.⁽¹⁾ The Committee further recommends that for the purpose of distributing the information circular or booklet, the definition of adverse decision be expanded by the Board to include those decisions whereby the claimant obtained a result qualitatively and/or quantitatively less than was sought in the claim.⁽²⁾

With respect to Recommendation No. 28, concerning the future necessity of the Board's booklet "Claims Information for Employees +

Employers", the Committee recommends that The Workmen's Compensation Board proceed with its revision of the document referred to in that recommendation and to advise the Committee forthwith as soon as the revision has been completed.⁽³⁾

The Committee was advised that The Workmen's Compensation Board is preparing briefs for submission to the Commission on Freedom of Information and Individual Privacy and the Commission of Inquiry into the Confidentiality of Health Records in the Province of Ontario. In the Board's opinion, a response to Recommendation No. 29 respecting a review of the Board's policy regarding disclosure of files to claimants, would at this time be inappropriate until the briefs had been completed and submitted.

The Committee noted the advice from the Vice-Chairman of Appeals that the issues touched by Recommendation No. 29 would be dealt with fully by either or both of the briefs to be submitted to the Commissions in question. Accordingly, the Committee defers any request of the Board to respond to this recommendation until the briefs in question have been presented to the Commissions. The Committee recommends, however, that The Workmen's Compensation Board file with it the briefs it will submit to the Commission on Freedom of Information and Individual Privacy and to the Commission of Inquiry into the Confidentiality of Health Records in the Province of Ontario forthwith as they are presented to each of the Commissions.⁽⁴⁾ The Committee reserves any further comment on this matter until it has received and considered the said briefs.

The Committee thanks the Board for its thorough and frank response to Recommendation No. 30, respecting the merits of a one-level appeal system. The Committee recognizes the fact that the Board in choosing the appeal procedures presently in force had regard for and was in some measure persuaded by

the representatives of employees in the Province of Ontario. Specifically, the Committee notes that the Board was in some way persuaded by organized labour's statement that it was willing to accept the delays occasioned by a two-level process in order that appeals can be dealt with in a process that provides for the most exhaustive review and the fullest opportunities for the proper presentation of the case.

However, the Committee wishes to remind the Board and the members of the Legislature that the process envisioned by The Workmen's Compensation Act is not adversarial. The Committee is concerned that the process tends to be adversarial and the Board's decision to retain the two-level system may have been influenced by its judgment that the process is best served in an adversarial setting. The Committee remains concerned as are members of The Workmen's Compensation Board, as to the time taken to process a claim through all the Board levels. The Committee recommends that the Board review its present appeal process with a view to determining whether and to what extent it can be streamlined and made more efficient while serving the interests of all those affected thereby. (5)

The Board, in response to Recommendation No. 32 has implemented new guidelines for the recovery of overpayments made to an injured workman. The Board attaches to this report as Schedule "B" in Part XI those guidelines.

In response to Recommendation No. 37, on the 5th day of July, 1978, the Board reconsidered, pursuant to Section 75 of the Act, Complaint No. 135 in the Ombudsman's Second Report which dealt with a recommendation of the Ombudsman that the Board take an active role to assist the person to return to the labour force. The Board decided not to hold a hearing although the recommendation of this Committee calls for same. The Board, after making certain

inquiries, decided that no new evidence was available which could be considered in the usual way at a hearing. In the circumstances, the Committee considers the Board's response to be satisfactory. However, it also notes the Board's willingness to reconsider this matter if at any time in the future any new evidence can be provided in respect of the individual's ability to resume employment. Accordingly, the Committee recommends that the Ombudsman's office on a regular basis communicate with the complainant referred to in Complaint No. 135 in his Second Report with a view to providing The Workmen's Compensation Board forthwith with any new evidence coming to its attention which would cause the Board to reconsider the matter pursuant to Section 75 of The Workmen's Compensation Act.⁽⁶⁾ In making this recommendation, the Committee also reminds the Board of the Committee's views as to the Board's responsibility in this case.

The Committee notes that in response to the Committee's Recommendations No. 39 and 40, respecting a rehearing of the issue whether certain symptoms were an "aggravation by the work incident", the Appeal Board panel constituted has concluded that a further hearing in the matter should be scheduled for an appeal panel as soon as possible. Accordingly, the Committee recommends that The Workmen's Compensation Board schedule such a hearing as soon as possible respecting the complaint referred to by Recommendations No. 39 and 40 of the Committee's Third Report and that thereafter it advise the Committee forthwith of the results of that hearing.⁽⁷⁾

During the course of discussion of the Board's various responses, it was apparent to the Committee that a number of the responses (Recommendations No. 37, 39 and 40) were formulated by the Board within four weeks of the Committee's scheduled hearings. This was a fact notwithstanding that the

Committee's report was tabled in the Legislature in November, 1977. The Committee recommends that hereafter, The Workmen's Compensation Board prepare and submit responses to recommendations contained in subsequent reports of this Committee, within a reasonable period of time immediately after the tabling of the reports in question in the Legislature.⁽⁸⁾ To do less would result in a further delay in the process which may cause unnecessary hardship to the members of the public affected thereby.

(B) TABLE OF GOVERNMENTAL ORGANIZATIONS WHICH HAVE MADE UNSATISFACTORY RESPONSES TO RECOMMENDATIONS MADE BY THE COMMITTEE IN ITS THIRD REPORT

(a) MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS

Recommendation No. 18

The Minister of Consumer and Commercial Relations introduce legislation clarifying and defining the status of persons affected by the sex designation change and the proposed amendment to the Vital Statistics Act so as to avoid the creation of a third category of persons in the Province of Ontario.

(b) MINISTRY OF TREASURY AND ECONOMICS

Recommendation No. 34

The Audits Act and The Financial Administration Act be amended to provide that when the Ombudsman, after all necessary and appropriate requirements of The Ombudsman Act have been adhered to, makes a recommendation to a governmental organization for the payment of a sum of money, in the absence of any other express legal authority, and when the recommendation is entirely accepted by the governmental organization, a "lawful authority" is created for such money to be paid by the governmental organization out of the Consolidated Revenue Fund. (Page 77)

(c) WORKMEN'S COMPENSATION BOARD

Recommendation No. 31

The Workmen's Compensation Board in conjunction with the Ministry of Labour forthwith cause an amendment to be

tabled in the Legislature to The Workmen's Compensation Act, specifically authorizing the Board to recover or write-off, as the case may be, overpayments made to workmen.

Ministry of Consumer and Commercial Relations

The Minister of Consumer and Commercial Relations, commenting upon the Committee's Recommendation No. 18 during a debate in the House, stated that the Province lacked jurisdiction to implement such a recommendation, on the grounds that the Federal Government pursuant to The British North America Act, had exclusive authority to effect the legal status of individuals for the purpose of marriage.

The Deputy Minister advised the Committee that, in his opinion, implementation of the Committee's recommendation would not fall within the legislative jurisdiction of the Province.

The Committee discussed this recommendation in more detail with one of the Ministry's legal counsel. Counsel also confirmed to the Committee that Bill 11 does not and was not intended to establish a new sexual status for a post-operative transexuals nor does it attempt to answer the legal implication raised by the transexual operation on the following grounds. Firstly, it is beyond the scope of The Vital Statistics Act. Secondly, that other provinces with similar legislation have disclosed no problems foreseen by the Committee.

In the Committee's opinion, the issue of marriage has served to cloud the Committee's central concern in respect of the potential consequences to one undergoing such a sex designation change and seeking the birth certificate amendment as provided by Bill 11. The question of marriage is but one example of the great uncertainty which will surround the individuals affected as the

provisions of Bill 11 are implemented. The Committee considered many other examples whereby as a result of the sex designation change and the birth certificate amendment, substantive questions are raised as to the legal rights of the individual, for example; rights under The Family Law Reform Act, and rights under other Provincial Acts where gender is a factor. It may be that the Government intended that the rights of the individual flowing from these various provincial Acts would not be affected by the operative procedure of the birth registration amendment. That notwithstanding, the uncertainty which will surround persons affected will in itself, at least in a practical way, affect their rights in law. For this reason and in the Committee's opinion, the Government has a duty to the extent that it is within its legislative competence, to clarify and define the status of these individuals under the laws administered by the Province. Additionally, in the Committee's opinion, the Province has a duty to prevail upon its counterparts in the Federal Government to enact legislation on a Canada-wide basis, removing any doubt or uncertainty in respect of the legal status of these individuals.

Ministry of The Treasury and Economics

Recommendation No. 34 was rejected by the Ministry on the grounds that it is contrary to the parliamentary principle that money can only be appropriated by a Minister or the Crown with the ultimate approval of the Legislature. The Ministry apparently interpreted this recommendation as providing for an expenditure of public funds in specific circumstances in a way that circumvented legislative approval. This was never the Committee's intention.

The procedure to be followed with this recommendation for the payment of monies is identical to that employed whenever public money is appropriated upon the direction of any "other lawful authority" as provided by Section

23 of The Financial Administration Act or whenever a payment had been made for special cases under Section 12 of The Audit Act, R.S.O. 1970, Chapter 166, which was repealed earlier this year. It merely expands, by one, the definition of "other lawful authority" within the meaning of Section 23 of The Financial Administration Act.

The Audit Act has been repealed (Statutes of Ontario, 1977, Chapter 61). The new Act proclaimed on April 1, 1978 contains no provision for the Attorney General or his deputy to certify a payment for special cases. This Act is no longer relevant for consideration of such a payment. Accordingly, the Committee amends Recommendation No. 34 of its Third Report and recommends in this Report that The Financial Administration Act be amended to provide that when the Ombudsman, after all necessary and appropriate requirements of The Ombudsman Act have been adhered to, makes a recommendation to a governmental organization for the payment of a sum of money, in the absence of any other express legal authority, and when the recommendation is entirely accepted by the governmental organization, a "lawful authority" is created for such money to be paid by the governmental organization out of the Consolidated Revenue Fund.⁽⁹⁾

Workmen's Compensation Board

The Committee urges The Workmen's Compensation Board and the Ministry of Labour to table an amendment to The Workmen's Compensation Act which will satisfy Recommendation No. 31, respecting the writing off or recovery of overpayments made to injured workmen.

(C) TABLE OF GOVERNMENTAL ORGANIZATIONS WHICH HAVE NOT RESPONDED TO RECOMMENDATIONS MADE BY THE COMMITTEE IN ITS THIRD REPORT

(a) MINISTRY OF HOUSING AND
MINISTRY OF THE ATTORNEY GENERAL

Recommendation No. 1

Accordingly, this Committee recommends that the Government cause the Commission's report to be submitted forthwith and that immediately thereafter a Commission of Inquiry or other suitable forum be appointed under The Public Inquiries Act, 1971 with terms of reference identical to the agreement between the Minister of Housing and the Ombudsman dated October 1, 1976, such Order-In-Council to append as schedules thereto the said agreement and the transcript of the Select Committee's proceedings dated October 1, 1976. Further the Order-In-Council to provide that the Commission or forum actively inquire into the issues relevant to the former landowners and the property acquisition agents, that the Commission or forum retain its own counsel to assist it in the investigation, preparation and presentation to it of all relevant evidence. With respect to the phrase "adversarial nature", it should be given the identical context in the Order-In-Council as it is given in the agreement of October 1, 1976 and as interpreted by the Court of Appeal in its judgment released April 1, 1977.

See Part III of this Report for the Committee's comments.

PART II

FOURTH REPORT OF
THE SELECT COMMITTEE

The Committee tabled this Report in the Legislature on the 29th day of May, 1978. It was debated by the Legislature on the 9th day of June, 1978. The Committee considers the matters discussed in this Report to be of great

significance. This is especially so since in a very short while a new Ombudsman will be sworn into office. That person will require a great deal of advice, assistance and support from the members of the Legislature, collectively and individually. It is imperative that the relationship that will develop between the new Ombudsman and the Legislative Assembly be based on a full knowledge, understanding and appreciation of their respective roles. The Committee's Fourth Report will be of great assistance to the members of the Legislative Assembly in creating and developing that relationship. For this reason, the Committee urges each member of the Legislative Assembly to again study its Fourth Report.

PART III

NORTH PICKERING

The Committee is deeply disturbed by the events that have evolved since it tabled its Third Report to the Legislature in November, 1977. The Committee will be submitting a Report to the Legislature on the North Pickering matter before the Christmas recess.

PART IV

THIRD REPORT OF THE OMBUDSMAN
(April 1977 - September 1977)

The Ombudsman's Third Report contains a number of matters which are also dealt with in his Fourth Report, from a perspective of the later reporting period (October 1977 - March 1978). To avoid duplication, the

Committee considered the matters common to both Ombudsman Reports during its hearings in August. For the purpose of reporting herein, the Committee has chosen to deal with the matters common to both Reports under Part V hereof, "Fourth Report of the Ombudsman (October 1977 - March 1978)".

(A) CORRECTIONAL INSTITUTIONS REPORT

See Part V, page .

(B) STATISTICAL ANALYSIS

See Part V, page .

(C) MANAGEMENT STUDY

See Part V, page .

(D) RESPONSES FROM THE OMBUDSMAN TO RECOMMENDATIONS ADDRESSED TO HIM BY THE COMMITTEE IN ITS THIRD REPORT

In its Third Report, the Committee addressed a number of recommendations to the Ombudsman. These recommendations dealt substantially with matters relating to the operation of the Ombudsman's office and with the working relationship between the Ombudsman's office and governmental organizations in general.

The Ombudsman responded to these recommendations in writing to the Committee on August 4th, 1978 and in more detail during his attendance before the Committee from August 29th to August 31st, 1978.

The following are recommendations made by the Select Committee in its Third Report, with page references, to which the Ombudsman has specifically responded, together with comments and recommendations, if any, which the Committee at this time considers appropriate:

Recommendation No. 2 (page 16)

"The Ombudsman and his office define more precisely appealable decisions from governmental organizations,

provide as many examples thereof as possible from the experience of the office to date to the Ministry of the Attorney General and thereafter conduct meetings with the Ministry of the Attorney General."

The Committee was advised that meetings are scheduled with the Attorney General's office to discuss the substance of the Committee's recommendation in more detail. The Committee expects a further more detailed report from the Ombudsman's office when the meetings have been completed.

Recommendations No. 4, 5, 6, 7, 9 and 10 - Management Study

The substance of these recommendations set out below is discussed in more detail in Part V.

Recommendation No. 4

"An amount be received and approved as part of the Ombudsman's estimates required to find a complete management study for the Office of the Ombudsman by a firm or individual chosen by the Ombudsman in accordance with the required proposal and tendering procedures of the Manual of Administration."

Recommendation No. 5

"The Ombudsman in choosing the management consultant best suited to perform the service intended, secure the term of the retainer, that the consulting firm upon completion of the study and service, furnish him with a "Report" which will summarize the format of the study, the findings of the study, the recommendations, suggestions, clarifications, improvements, and matters initiated

within the study, and present it to the Ombudsman's office, together with a summary of those recommendations, suggestions, clarifications, improvements, and matters initiated by it which have been implemented by the Ombudsman, together with a summary of those recommendations which have not been implemented with reasons, if known to the management consultant."

Recommendation No. 6

"The Ombudsman table the report referenced in Recommendation #5 with the Committee forthwith upon receipt thereof by him so that the Committee can continue its review and consideration of the matters relating to the organization and operation of his office."

Recommendation No. 7

"The Ombudsman specifically address the management consultant whom he may retain to the trends referable to his office's ability to process complaints as evidenced by the comprehensive statistical summary contained in his Second Report, for specific attention and treatment as part of the management consulting process."

Recommendation No. 9

"The Blueprint of the Ombudsman, in whatever stage it presently exists, be produced to the management consultant who may be chosen to perform the management consulting services."

Recommendation No. 10

"The Ombudsman in conjunction with the management consulting firm chosen, integrate this Blueprint with the result of the management study and thereafter table it, together with the Blueprint provided to the management consultant in accordance with Recommendation #9, with this Committee for review as part of its continuing consideration of the organization and operation of the Office of the Ombudsman."

The Committee is of the opinion that the Ombudsman, to the extent possible, largely complied with these recommendations.

Recommendation No. 8 (page 29)

"The Ombudsman forthwith amend his policy relating to the time spent by his office on non-jurisdictional matters so as to reduce the time his staff spends on this type of complaint."

The Committee was advised that it remains the Ombudsman's intention to continue to provide to the citizens of Ontario the service that the office of the Ombudsman has been providing in the area of complaints that fall outside the jurisdiction of the Ombudsman. However, because of the expected efficiencies from the implementation of recommendations contained in the management consultant's report, the statistical decrease of non-jurisdictional complaints coming to the Ombudsman's office and the creation of an Ombudsman at the federal level, the number of and time spent on non-jurisdictional complaints is expected to be reduced.

The Committee is mindful that the newly appointed Ombudsman may wish to review the time spent by the staff in respect of these types of

complaints. For this reason, the Committee makes no further comment at this time. It does, however, draw the newly appointed Ombudsman's attention to the text of its Third Report dealing with this matter (pages 28 and 29).

Recommendation No. 11 (page 41)

"The Ombudsman include in the case summaries contained in his subsequent reports the following:

- (a) an identification of the complaint received in writing indicating whether it is one or a combination of a decision, recommendation, act or omission of a governmental organization;
- (b) particulars of the Ombudsman's decision to investigate pursuant to Section 15(2) with reasons therefor, if any;
- (c) a summary of the investigation undertaken with special reference to the provisions of Sections 19 and 20 employed by the office in the circumstances;
- (d) if any notification has been sent to the governmental organization pursuant to Section 19(3) a description of the notice together with a description, if any, of what representations had been made to the Ombudsman by those affected;
- (e) the specific opinions reached by the Ombudsman after the investigation has been made pursuant to Sections 22(1) or 22(2) with concise reasons therefor;
- (f) the specific recommendations made to the governmental organization pursuant to Section 22(3) with concise reasons therefor;

- (g) the response, if any, received from the governmental organization in respect of his recommendations and a statement by the Ombudsman whether in his opinion the response is adequate or appropriate;
- (h) a report on any meetings held by the Ombudsman with the Premier in respect of any recommendations denied;
- (i) if a decision is made by the Ombudsman not to refer the matter to the Premier, reasons therefor;
- (j) a statement by the Ombudsman of what he wishes the Committee to address itself to in considering a particular complaint and what recommendation, if any, he would like the Committee to make to the Legislature;
- (k) where a finding has been made in favour of the governmental organization, items (a) through (c) inclusive and item (j) should be contained in the case summary."

The Committee noted that the reporting of detailed case summaries in the Ombudsman's Third and Fourth Reports substantially complies with the substance of this recommendation.

The Ombudsman, however, reminded the Committee that his Reports are widely distributed and read by a great many interested citizens. It is his view, accordingly, that the case summaries which illustrate the work of the Ombudsman be written in a style that lends itself to relatively easy reading. The Committee agrees with the Ombudsman that detailed case summaries cannot be

cloaked in language which renders the reading of same only possible by lawyers and legislators. The Committee, however, urges the Ombudsman and his office that when drafting the detailed case summaries for future reports, they ensure that the information covered by this recommendation be included.

Recommendation No. 12 (page 41)

"The Ombudsman's office revise its terminology in reporting line summaries of complaints so that the risk of misinterpretation by the public as to the conduct of the governmental organization is eliminated."

The Committee commends the Ombudsman for ensuring that hereafter there will be no misinterpretation by the public of conduct of the various governmental organizations as reported in the capsule case summaries found in his various reports.

Recommendation No. 13 (page 46)

"The Ombudsman re-open Complaint #5 at page 500 of his Second Report to consider whether all complaints arising out of this case have been fully investigated and to consider whether any re-emphasis of investigation might permit the Ombudsman to formulate opinions and make recommendations pursuant to Section 22 of The Ombudsman Act."

This recommendation required the Ombudsman to consider whether an investigation of some other aspect of the complaint of unjust compensation for expropriated land might permit him to make a report pursuant to Section 22 of The Ombudsman Act. The Ombudsman did consider the matters raised by this Recommendation and decided not to re-investigate. The Committee considers that the Ombudsman has fully complied with this recommendation.

Recommendation No. 15 (page 50)

"The Ombudsman and his office keep the Ministry of Consumer and Commercial Relations informed of any further examples of perceived hardship to individuals as a result of the seven year period contained in The Consumer Reporting Act."

The Committee considers the Ombudsman has and will continue to fully comply with this recommendation.

Recommendation No. 19 (page 52-53)

"In all subsequent reports the Ombudsman, except to the extent he considers it necessary pursuant to Section 13(2) of The Ombudsman Act, not disclose the identity of penal institutions from which complaints originated."

The Ombudsman reports that he has refrained from disclosing the identity of penal institutions from which complaints originated. The Committee considers the Ombudsman to have fully complied with this recommendation.

Recommendation No. 20 (page 53)

"The Ombudsman forthwith take such steps as are necessary within his office to instruct his staff to hereafter refrain from commenting to representatives of governmental organizations as to the suitability and competence of servants, agents or employees of the government organization."

The Ombudsman advised that he is only aware of one case in which a member of his staff engaged in the type of conduct referenced by this recommendation and that the particular staff member has been instructed to

refrain from this type of conduct in the future. While the Ombudsman's information with respect to the frequency of such an incident may be accurate, the Committee is concerned that general instructions be issued to all of his staff members on this matter. Therefore, the Committee recommends that the Ombudsman, if he has not already done so, issue instructions to all members of his staff in the substance of Recommendation No. 2 in its Third Report.⁽¹⁰⁾

Recommendation No. 26 (page 62-63)

"During the period of time, provided that it is reasonable, that the Ombudsman is waiting upon action, steps or response from a governmental organization to a recommendation made by him, no further act in the nature of investigations of the particular complaint be undertaken by his office without the express knowledge of the head of the governmental organization in question."

The Committee considers that the Ombudsman has and will continue to fully comply with this recommendation.

Recommendation No. 33 (page 74)

"The Ombudsman in his next report state the reasons why he decided not to investigate further the issue of the miscalculation of benefits payable to workmen as found in Complaint #132 of his Second Report."

The Ombudsman has not as yet provided the Committee with reasons why his office decided not to further investigate the issue of the miscalculation of benefits. Accordingly, the Committee recommends that the Ombudsman and his office table with the Committee those reasons in writing forthwith.⁽¹¹⁾

Recommendation No. 38 (page 83)

"The Ombudsman in all cases reply to a response made by a governmental organization to his recommendation within a reasonable time."

The Ombudsman advised that his office makes every effort to reply to the said responses within a reasonable period of time. The Committee, upon reviewing certain cases in detail from the Third and Fourth Reports of the Ombudsman, noted that the time period between the governmental organization's response and the Ombudsman's reply has, in fact, been meaningfully abridged in comparison with the time taken in cases reviewed arising out of the First and Second Reports of the Ombudsman.

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- (E) SPECIFIC CASE SUMMARIES CONTAINED IN THE THIRD REPORT WHEREIN ISSUES ARE RAISED REQUIRING A MORE DETAILED REVIEW BY THE COMMITTEE AND SPECIFIC CASE SUMMARIES WHEREIN RECOMMENDATIONS MADE BY THE OMBUDSMAN TO THE GOVERNMENTAL ORGANIZATION IN QUESTION HAD BEEN DENIED

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- (a) Specific Case Summaries Wherein Issues Are Raised Requiring A More Detailed Review By The Committee

In previous Committee Reports, it has referenced each detailed case summary considered by it during the course of its hearings. In the Committee's opinion, it is not necessary to report on all cases placed on its agenda and considered by it in some detail. Accordingly, the Committee in this Report has referenced only those summaries which, as a result of the Committee's review, issues are disclosed which in the Committee's opinion, should be brought to the attention of the Legislature. The Committee has adopted the same approach with respect to its Report of case summaries found in the Ombudsman's Fourth Report (Part V).

MINISTRY OF COLLEGES AND UNIVERSITIES

(1) Complaint #7 (pages 121-126)

The complainant in this case registered complaints with the Ombudsman's office against The Human Rights Commission, the Minister of Colleges and Universities, a commissioner for a Royal Commission of Inquiry and an M.P.P. The Ombudsman found the complaints against the Minister of Colleges and Universities, the commissioner for the Royal Commission of Inquiry and the M.P.P., to have been outside his jurisdiction. That notwithstanding, with respect to the complaints made against the Minister of Colleges and Universities, the Ombudsman found that the complaints were in substance unjustified and incapable of imputing any blame-worthiness to the Minister.

The Ombudsman so reported these findings in his final report to the complainant sent approximately one year after the complainant came to the Ombudsman's office. Shortly thereafter, the media in the locale where the complainant resided was made aware of the substance of the Ombudsman's findings in respect of the Minister and so reported same in the press.

Notwithstanding that the Ombudsman received a complaint in respect of the Minister of Colleges and Universities and another M.P.P., no notice of those complaints was ever forwarded to either. The Committee was advised by Mr. Bruce A. Wilson, Assistant Deputy Minister, University Affairs Division, that the Minister's office had only learned that the Ombudsman's office had investigated the complaints against the Minister and had expressed his opinion in respect thereto, in the fall of 1977 when he learned of the media reports.

The Ombudsman's office informed the Committee that in their view, it would be impracticable to inform Ministers of the Crown and/or members of the Legislative Assembly of each and every complaint concerning their conduct, that was launched with the Ombudsman's office.

The Committee does not agree with the Ombudsman. The Committee recommends that the Ombudsman not comment in any communication made to the complainant, on the conduct of a Minister or a member unless the complaint is received and processed by the Ombudsman pursuant to the provisions of The Ombudsman Act.⁽¹²⁾

MINISTRY OF COMMUNITY AND SOCIAL SERVICES

(1) Complaint Summary #8 (pages 127-128)

This complaint concerned the denial by the Provincial Benefits Branch of the Ministry of an amount for repairs of the complainant's roof. The Ombudsman's recommendation pursuant to Section 22(3) of The Ombudsman Act was ultimately accepted by the Minister and the amount was paid to the complainant pursuant to an Order-In-Council passed pursuant to Section 8 of The Family Benefits Act.

The Committee considered this case in more detail to determine whether the Ombudsman's investigation disclosed some error in principle in respect of the application of the procedural guidelines by the Ministry which resulted in the allowance being refused initially.

After considering the particular circumstances of this complaint in detail, the Committee has concluded that there was no error in principle present in respect of this particular case, nor did the Committee detect any error in principle in respect of the application of the relevant procedural guidelines generally. The Committee was advised by the Director of Provincial Benefits that the procedural guidelines in force at the time the application for a repair allowance was made have been changed. The Committee attaches hereto as Schedule "C" a copy of the present operating procedure.

The Committee is concerned that this particular complaint arose not because of any inherent complexity of the procedures or with any error on the part of the Ministry in respect of the application of those procedures, but rather from an absence of clear communication to an applicant of the mandatory conditions precedent to approval of this type of an allowance. The Committee therefore recommends that the Ministry of Community and Social Services undertake a review of its procedures respecting allowances for home repairs to ensure that all future applicants for such an allowance are made fully aware of all mandatory procedures.⁽¹³⁾

MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS

(1) Complaints #11 and 15 (pages 135-136, 140-142)

When the Committee finalized its agenda for consideration of the Ombudsman's Third Report in May, 1978, it originally intended to consider these two complaints for the purpose of determining whether any procedural shortcomings continue to be inherent in the Rent Review Board's procedures which might lead to a recurrence of the type of complaints disclosed therein and secondly to determine whether the Legislative amendment recommended by the Ombudsman in Complaint #15 (that the Board be empowered to consider any decision, order, declaration or ruling made by it and vary, amend or revoke any such decision, order, declaration or ruling, such power to be retroactive), had been implemented by the Ministry.

The Ombudsman in his Fourth Report again referenced these complaints and addressed comments in a more general way in respect of the Rent Review program and the Residential Premises Rent Review Act, 1975. Therefore, the Committee did not consider the substance of these complaints in detail. Its report of the general issues raised by the Ombudsman in his Fourth Report are discussed under Part V hereof.

(2) Complaint #12 (pages 136-137)

The Committee was advised that the complainant has commenced legal proceedings in consequence of the agreement he and his wife entered into to purchase a particular property. The Committee in those circumstances decided not to consider nor comment on this complaint further.

(3) Complaint #16 (pages 142-144)

The Committee placed this matter on its agenda to consider whether the office of the Ombudsman was used indirectly by the complainant's solicitor as an investigative and negotiating tool to further the complainant's interest in a legal action. The Committee noted that the complainant retained legal counsel at approximately the same time the complaint was lodged with the Ombudsman's office. Complainant's counsel undertook discussions with the Ministry and other appropriate government representatives at the same time as the Ombudsman notified the Ministry of his intention to investigate.

The Ombudsman concluded his investigation and forwarded a report pursuant to Section 22 of The Ombudsman Act to the Ministry which contained a recommendation that the complainant be compensated in a specified amount in consequence of the actions of the Ministry of Housing and the Ministry of Consumer and Commercial Relations.

In the letter the Ombudsman informed the Ministries that:

"I am aware that notice has been served pursuant to the proceedings against The Crown Act by the solicitor for (complainant). In view of this, in the event that you are prepared to implement my recommendation, I intend to put (complainant) to election as to whether to accept the compensation which I have recommended in

full and final satisfaction of all claims, or in the alternative, to proceed with a court action."

The Deputy Minister of Consumer and Commercial Relations responding on behalf of both Ministries, advised the Ombudsman that as notice had been served pursuant to the proceedings against The Crown Act the matter ought to be resolved in the traditional manner. The Ombudsman concurred with this position and urged the complainant and his solicitor to proceed with the action in the usual way. In a subsequent letter to the Deputy Minister of Consumer and Commercial Relations the Ombudsman stated that:

"If the action is not settled before it reaches trial or results in a verdict unfavourable to (complainant), I will proceed with my recommendation."

The Committee discussed with the Ombudsman's office whether it was appropriate for the Ombudsman to conduct an investigation parallel to an action in the courts against the governmental organization for the identical relief sought and further whether it was appropriate for the Ombudsman to advise the governmental organization that he would press forward with his recommendation should the verdict at trial be unfavourable to the complainant.

The Ombudsman considered that his findings and recommendation would have been in no way inconsistent with the possibility of an unfavourable verdict to the complainant. In other words, the complainant may not have been able to establish a right to damages or recovery in the causes of action litigated in the courts, but that would not derogate from the Ombudsman's ability to formulate an opinion pursuant to Section 22(1) of the Act nor to make a recommendation in the substance he made in this case pursuant to Section 22(3).

The Committee recognizes that The Ombudsman Act provides for the carrying out of the Ombudsman process parallel to an action in the courts on the identical facts and circumstances.

However, the Committee is concerned that the actions of the Ombudsman's office parallel to a matter proceeding in the courts may prejudice the rights of one of the parties to the litigation. The Committee wishes to draw its concern to the Ombudsman's attention in the hope that the Ombudsman will hereafter exercise this right sparingly and only when he is satisfied that no prejudice will befall either party to the legal proceedings. The Committee intends to discuss with the newly appointed Ombudsman, whether a general rule in this area is appropriate.

After considering the detail of this case, the Committee has concluded that the parallel proceedings conducted by the Ombudsman's office and his report and recommendations made prior to the issuance of the writ of summons did not in any way alter or affect the disposition of the action or the position taken by the Ministry in the action.

MINISTRY OF HEALTH

(1) Complaint #40 (pages 172-178)

The Committee considered this complaint for the purpose of follow-up with the Ministry as to the implementation of the Ombudsman's recommendations as set out at pages 177 and 178 of the Ombudsman's Third Report.

The Executive Chairman of the Area Planning Co-ordinators responded on behalf of the Ministry as to the additional steps which have been taken subsequent to the letter from the Minister to the Ombudsman dated May 4, 1977. The Committee has attached the said response to this report under Part XI as

Schedule "D". The Committee is of the opinion that the Ministry has and will continue to fully comply with the recommendations of the Ombudsman.

(2) Complaint #42 (pages 179-182)

One of the complaints investigated by the Ombudsman's office was an allegation that the complainant had been assaulted by two attendants employed by the hospital facility under the jurisdiction of this Ministry. After a full investigation of the matter, the Ombudsman concluded that the allegations referable to the assault could not be supported. The Ombudsman so reported to the complainant by letter pursuant to Section 23(2) of The Ombudsman Act. A similar report was sent to the Deputy Minister of Health at about the same time. However, the Ombudsman in view of the sensitive nature of the investigation, decided to send copies of the report sent to the Deputy Minister to the Medical Director of the hospital in question and to the legal counsel of the persons who were alleged to have assaulted the complainant.

The Committee noted that the letter forwarded to the legal counsel for the individuals contained reference to psychiatric opinions of one of the complainant's attending physicians. The reference to these opinions was deleted from the report sent to the complainant largely because of their sensitive nature. Therefore, the Ministry and the solicitor representing the persons who were alleged to have assaulted the complainant were made privy to confidential psychiatric opinions of one of the complainant's attending physicians.

The Committee is sympathetic to the Ombudsman and his staff's desire to exonerate persons against whom very serious allegations have been made by complainants which allegations as a result of the Ombudsman's investigation are proven unfounded. However, disclosing any information received by him as Ombudsman is not, in the Committee's opinion, the way to do it.

The Ombudsman and his staff clearly in this case disclosed information received by him as Ombudsman. Unless and until The Ombudsman Act is amended affording the Ombudsman a wider discretion in the disclosure of information received by him, this type of occurrence must not recur. Accordingly, the Committee recommends that the Ombudsman and his staff shall not, except where permitted by The Ombudsman Act in carrying out functions thereunder, disclose to any third parties any information received as Ombudsman by him or his staff.

WORKMEN'S COMPENSATION BOARD

(1) Complaint #79 (pages 242-243)

The Committee considered this complaint for the purpose of determining whether the procedures employed for the recovery of the benefit overpayment were consistent with the new procedures adopted by the Board. The Committee was advised that the recovery of this overpayment was started prior to the new procedures being enacted. However, any procedures yet remaining for the recovery of this overpayment will be in accordance with the new procedures as referenced earlier in this report. In any event, the Committee noted that the attitude adopted by the Board in this case was more sympathetic to the workman than that which has previously existed.

(b) Detailed Case Summaries Wherein Recommendations Made By The Ombudsman To The Governmental Organization In Question Had Been Denied

MINISTRY OF COMMUNITY AND SOCIAL SERVICES

(1) Complaint #10 (pages 129-134)

The Ombudsman reported this complaint in his Third Report as a recommendation denied. Up until the time the Ombudsman's report was tabled in the Legislature, the Minister remained of the view that he could not implement

the Ombudsman's recommendations notwithstanding a significant effort on the part of the Premier in accordance with Section 22(4) of The Ombudsman Act.

When the Committee came to consider this complaint in detail, it was informed by the Ministry officials and a representative of the Ombudsman's office that upon a further consideration of the matter, the Minister had decided he was prepared to forward a letter to the complainant which letter is attached to this report as Schedule "E".

The explanatory material relating to current procedures referred to on page 2 was supplied to the Ombudsman about the date the Minister's letter was prepared. The Committee attaches these procedures to this report as Schedule "F".

The representative of the Ombudsman's office informed the Committee that the Ombudsman had considered the Minister's letter and memorandum referable to grievance procedures and was of the opinion that the Minister's actions were adequate and appropriate within the meaning of Section 22(4) of The Ombudsman Act. The Committee agreed with the Ombudsman's judgment and accordingly, decided not to consider the complaint in any more detail nor to make any recommendation to the Legislature in this report.

WORKMEN'S COMPENSATION BOARD

(1) Complaint #75 (pages 233-235)

Subsequent to the tabling of the Ombudsman's Third Report in the Legislature, the Workmen's Compensation Board by an Appeal Board interim decision dated the 20th of July, 1978 appointed a medical referee pursuant to Section 22(1) of The Workmen's Compensation Act for the purpose of reporting to the Board on the diagnosis of the workman's complaints; the causal relation, if any, of any diagnosis to the complainant's employment and lastly, the complainant's fitness for employment.

The Committee was advised by representatives of the Ombudsman's office that they welcomed this action of the Board and that they recommended the Committee defer any further consideration of this complaint pending the report of the medical referee and subsequent actions of the Board, if any. The Committee accordingly agreed to defer any further consideration pending these events. However, the Committee recommends that The Workmen's Compensation Board take all appropriate actions in consequence of the medical referee's report forthwith upon receipt thereof and that thereafter the Board forthwith report any actions taken in consequence thereof to the office of the Ombudsman.⁽¹⁵⁾ The Committee further recommends that the Ombudsman, within a reasonable time after he has been informed of the Board's actions subsequent to the receipt by it of the referee's report, advise the Committee of whether, in his judgment, the said actions are adequate and appropriate within the meaning of Section 22(4) of The Ombudsman Act.⁽¹⁶⁾

(2) Complaint #77 (pages 238-240)

Subsequent to the tabling of the Ombudsman's Third Report with the Speaker, The Workmen's Compensation Board advised that it would constitute an Appeal Board panel to re-hear this case pursuant to Section 75 of The Workmen's Compensation Act. The Board informed the Committee that it is prepared to accept the recommendation of the Ombudsman that a relationship exists between the complainant's compensable accident of December 16, 1971, and the injured worker's psychological disability.

After some misunderstanding on the part of the representatives of the office of the Ombudsman in respect of the Ombudsman's view of the Board's subsequent action, caused in part by the instructions given to the representatives of the office by the Ombudsman, the Committee was advised that the

Ombudsman's office approves of the decision of the Board to allow the claim insofar as it has recognized the causal connection. However, the Ombudsman reserves judgment on whether the actions of the Board are adequate and appropriate until such time as he is informed of the subsequent Appeal Board's decision. Accordingly, the Committee decided that it would postpone its consideration of this complaint until the Ombudsman has had an opportunity to advise the Committee as to whether or not the subsequent actions by The Workmen's Compensation Board are adequate and appropriate within the meaning of Section 22(4) of The Ombudsman Act. The Committee therefore recommends that The Workmen's Compensation Board rehear the matters contained in Complaint #77 as quickly as possible and that thereafter it forthwith report its decision to the Ombudsman.⁽¹⁷⁾ The Committee further recommends that the Ombudsman, within a reasonable time after he has been informed of the Board's decision, advise the Committee of whether, in his judgment, the said decision is adequate and appropriate within the meaning of Section 22(4) of The Ombudsman Act.⁽¹⁸⁾

(3) Complaint #76 (pages 235-237)

The substance of this person's complaint and the investigation conducted by the Ombudsman in consequence thereof are set out in the Ombudsman's complaint summary in the text of his Third Report.

The Workmen's Compensation Board refused to allow the complainant's claim for compensation in consequence of a lumbo sacro strain which the complainant maintained was suffered during the course of employment. The Ombudsman, as a result of his investigation, concluded that the complainant had, in fact, suffered such a strain and that applying the principle of what he understood to be the doctrine of reasonable doubt, the Board should have found

that the strain was suffered during the course of employment. Accordingly, he formed the opinion that the decision of the Appeal Board to deny this person's claim was unreasonable and he accordingly recommended that the decision of the Board in question be cancelled and that the benefit of doubt be granted to the complainant and that the appropriate benefits be made payable to compensate for the time lost from work.

The Board, while acknowledging that the complainant had, in fact, suffered a lumbo sacro strain, declined to implement the Ombudsman's recommendation essentially on the grounds that they did not agree that there was evidence available to support the findings that the incident occurred during the course of employment.

The Board Commissioner appearing before the Committee advised that, in his opinion, this was not an appropriate case for the application of the doctrine of reasonable doubt. The Committee learned, however, that The Workmen's Compensation Board has more than one principle of what has been described as reasonable doubt. Rather, it produced to the Ombudsman's office in response to a specific request, a statement of "benefit of doubt". Further it produced to the Committee from the Adjudication Branch Manual a statement of "benefit of reasonable doubt". The statements provided to the Committee are appended hereto as Schedule "G". The substance of these statements are not the same.

The Vice-Chairman of Appeals advised the Committee that the principle of benefit of doubt or reasonable doubt or whatever has never been the subject of a formal Board order. In the Committee's opinion, if there is not uniform policy of benefit of the doubt which is applied at all decision-levels of the Board, then it is impossible for The Workmen's Compensation Board to

respond to the Ombudsman that the doctrine is not applicable in this case. The Committee understands the Board's intention in endeavouring to confer a benefit or allow an appeal of a workman when the available evidence makes it impossible to make a finding one way or another. However, when there are no guidelines, procedures or policies to indicate whether that intention should be exercised, the Board is in a very difficult situation especially when the Ombudsman, after conducting an investigation, forms the opinion that a Board decision is, for example, unreasonable.

Accordingly, the Committee recommends that The Workmen's Compensation Board forthwith formulate a policy of benefit of the doubt or reasonable doubt which policy is to be applied at all levels of decision-making within the Board, including the Appeal Board level.⁽¹⁹⁾ The Committee further recommends that when that policy of benefit of the doubt or reasonable doubt has been formulated and implemented, The Workmen's Compensation Board forthwith hold a hearing pursuant to Section 75 of The Workmen's Compensation Act in respect of this claimant's claim for compensation. The Appeal Board panel constituted for such a hearing should consider expressly whether the policy of benefit of the doubt is appropriate to be applied in this case. In the circumstances of a request made by the employer in this case, the Committee recommends that the employer be permitted to participate in the said hearing.⁽²⁰⁾

Some question arose during the Committee's consideration of Complaint #75 and #77 referenced above, as to the Ombudsman's jurisdiction in

respect of the complaints once they have been tabled in the Legislature pursuant to a report and have come before this Committee. This is discussed at greater length in Part IX.

PART V

FOURTH REPORT OF THE OMBUDSMAN (October 1977 - March 1978)

(A) CORRECTIONAL SERVICES REPORT

On June 12, 1978, the Minister of Correctional Services addressed the Ministry's response to the recommendations contained in the Ombudsman's Report on adult correctional institutions. The Minister tabled this document during his Ministry's estimates debates on June 14, 1978.

The Ombudsman is currently considering the response and is expected to issue a statement thereon in accordance with Section 22(4) of The Ombudsman Act by the early fall.

Both the Ombudsman and the Ministry reconfirmed that when the Ombudsman's process has been completed in respect of this Report, the Report, the Ministry's response and the Ombudsman's decision in respect thereto pursuant to Section 22(4) of The Ombudsman Act would be properly before the Committee for consideration as it deemed necessary and appropriate.

Accordingly, the Committee defers any further discussion of this matter until the Ombudsman's process has been completed.

(B) MANAGEMENT STUDY

Recommendation No. 4 of the Committee's Third Report provided that:

"An amount be received and approved as part of the Ombudsman's estimates required to fund a complete management study for the Office of the Ombudsman by a firm or individual chosen by the Ombudsman in accordance with the required proposal and tendering procedures of the Manual of Administration."

In November 1977, the Board of Internal Economy approved supplementary estimates of the Ombudsman including therein the sum of \$25,000.00 for a management study. This amount was less than the Ombudsman reported as necessary for a complete management study. The Committee understands that the Board of Internal Economy initially imposed certain conditions on the approval of the \$25,000.00 referable to participation therein by the Board of Internal Economy's staff. These conditions were ultimately resolved and in the spring of 1978, the Ombudsman retained the firm of Hickling, Johnston Limited to carry out the study.

On the 26th of May, 1978, the Hickling, Johnston firm presented to the Ombudsman a report entitled "Organization for Ombudsman Effectiveness". The report contains recommendations for a plan of organization which is believed will ensure that the office of the Ombudsman is able to meet the managerial challenges it faces in the years ahead.

The report prepared and submitted to the Ombudsman and the management consulting service provided for the \$25,000.00 fee is different from the initial study requested by the Ombudsman, the study contemplated by this Committee in its Recommendation No. 4 and the study recommended initially by the Hickling, Johnston firm.

The study undertaken by the Hickling, Johnston firm placed less emphasis, if any, on identifying and defining the framework of priorities which

the Ombudsman's office should adopt to meet the demands which would be imposed on the office in the future. Instead, the study was designed to improve and make efficient the structure of the office as it presently exists rather than approaching it from a standpoint of how it should be. In the words of the senior executive of the Hickling, Johnston firm:

"We addressed the question of program costs essentially in terms of the existing jurisdiction of the office and essentially in terms of the pattern of workload which was there and didn't speculate more broadly on some of the strategic alternatives to improve the management and administrative capacity of the office.".

The Ombudsman, by letter to the Chairman of the Hickling, Johnston firm, and in accordance with Recommendation No. 5 of the Committee's Third Report, advised that in substance he has accepted the report and the recommendations contained therein in their entirety with one or two minor exceptions which do not affect the substance and thrust of the report. The Committee commends the Ombudsman for causing his staff to undertake immediate and positive steps in response to the recommendations emanating from the management study.

The degree of implementation of the recommendations emanating from the management study is still in the preliminary stage. The matter is complicated in that the Chairman of the Management Committee and the Chief Executive Officer appointed under the new organization system, Mr. Keith Hoilett, is still taken with the North Pickering duties and is now acting as temporary Ombudsman. The matter is further complicated in light of Mr. Maloney's imminent resignation and the appointment of a new Ombudsman. The

Committee urges the Management Committee of the Ombudsman's office to give utmost priority to the implementation of the matters contained in the management study.

The Committee noted upon review of the Hickling, Johnston report that implicit in the organization of the Ombudsman's office was the personal influence or the "intent of the Ombudsman" as pervading every aspect of the office's organization. All recommendations emanating from the management study are against the background of that Ombudsman intent and the highly personalized form the office has taken. It is obvious therefore that the newly appointed Ombudsman may, by the very nature of his "intent", have views respecting the organization and operation of the office which may not be entirely consistent with those presently existing and which are recommended by the Management Consultant.

The Committee is of the opinion that the management report has only limited use. That is not to say, however, that the expenditure of the time, effort and money has been a total waste. There are some elements of the management report that contain advice on management techniques which will serve the Ombudsman's office however it is structured.

(C) STATISTICAL ANALYSIS

The Committee noted that for the two reporting periods covered by the Ombudsman's Third and Fourth Report, April 1977 to March 1978, the number of complaints opened and closed remained relatively stable. The number of jurisdictional complaints increased almost 20% from the third to the fourth period while the number of outside jurisdictional complaints dropped by almost the same percentage.

The number of complaints involving municipalities or local police forces dropped from 406 in the third reporting period to 290 in the fourth reporting period.

The number of recommendations denied has increased from 5 in the third reporting period to 10 in the fourth reporting period, 9 of which involved The Workmen's Compensation Board. It is expected that in the fifth reporting period, the number of recommendations in this category will further substantially increase. This concerns the Committee. It intends when it considers the next Ombudsman's report to determine whether there is any overriding reason for the dramatic increase in denied recommendations, especially with respect to those recommendations made to The Workmen's Compensation Board.

The Committee continues to be concerned that the number of days taken to close a complaint received by the Ombudsman's office continues to rise. In the third reporting period, the average duration to closing is 99 days, but in the fourth reporting period, it increased to 111 days. The Committee recommends that the Ombudsman review the procedures of the office and take all steps necessary to reduce the average duration of a file. (21)

(D) BLUEPRINT

The former Ombudsman informed the Committee that he had decided to delay the completion of this document until the Committee has formulated general rules for the guidance of the Ombudsman in the exercise of his functions under The Ombudsman Act. The Committee does not fully understand his reasons for delaying the completion and distribution of the document in this way. The document was not completed before the Ombudsman resigned his position.

As the document was not tabled as provided by The Ombudsman Act, it cannot, of itself, be a report of the Ombudsman and therefore, the Committee

sees no way that the publication of the document could be funded from the budget of the office of the Ombudsman.

(E) RENT REVIEW

In this Fourth Report, pages 36-42, the Ombudsman referenced two issues which have arisen during the course of his office's investigation of various complaints referable to the Rent Review Program and the Rent Review Board.

In the first instance, the Ombudsman is of the opinion that where the Rent Review Program or the Rent Review Board agrees that an error has been made by one or the other in the administration of the Act, the legal costs of the complainant upon an application for judicial review to vary, amend or set aside the decision complained of, should be borne by the Program or the Board, as the case may be. It is understood that the circumstances wherein judicial review is necessary are limited to those cases wherein the Rent Review Board has not on its own motion within 30 days of its original order decided to re-hear an appeal therefrom. The Ombudsman referenced two complaints reported by him in this Third Report wherein the then Chairman of the Rent Review Board agreed that the Board would not oppose an appropriate application for judicial review and would further recommend to the Attorney General that an order be issued with respect to this matter on consent. However, the Chairman of the Board and representatives of the Rent Review Program have since changed their position on the question of costs. They believe that neither the Board nor the Program have any statutory authority or any funds to enable them to pay legal costs. They feel that if any party other than the complainant opposes an application, those costs should not be paid. They were further concerned that in agreeing to pay costs, the rights of either the Board or the Program might be prejudiced if they wish to develop or amend the legal proceedings later. The Ombudsman does not agree with the Program or the Board on these reasons for refusal to pay legal costs.

The Ombudsman is also of the opinion that the Rent Review Board should have an unlimited right to re-hear appeals and rescind and amend its orders. The Ombudsman noted that the Act was amended in 1977 to empower the Board on its own motion within 30 days of its order to decide to re-hear an appeal and confirm, rescind, amend or replace its decision or order where, in its opinion, there has been a serious error. The Ombudsman notes that if the Board were given unlimited power as he recommends, the discussions and difficulties on the question of legal costs and on the question of judicial review would disappear.

The Committee considered the issues raised by Complaint Nos. 11 and 15 in the Ombudsman's Third Report to determine whether there is evidence of any general practice or procedure by the Rent Review Board which might cause the type of complaints referenced therein to recur in a more general way. The Chairman of the Rent Review Board advised the Committee of the reduced numbers of Board members actively and continuously hearing appeals; the continuing education sessions made available to Board members; and the administrative procedures both before and after a Board hearing to ensure a full consideration of all relevant issues and to ensure a decision of the Board most correct in law and most consistent with the facts available. The Committee commends the Chairman and the Board for these procedures and urges it to continue to scrutinize its procedures with a view to improving them even further. In the circumstances, the Committee chooses not to make any recommendations to the Board in this regard.

The Committee understands the position of the Board and the Program on the questions of costs to be that any general agreement to pay costs on an application for judicial review in respect of a Board order would place the Board in a position wherein it was stopped from altering or amending its position

upon the hearing of the application and/or wherein it was funding a great many applications to the Divisional Court which ought not to be brought in the first instance.

The Committee concurs with the Program and Board on the question of costs to the extent that it applies to applications for judicial review wherein issues are raised which the Board either disagrees with or seeks the guidance and interpretation of the Court on some point of law or procedure. However, where a situation exists that the Program or the Board agrees that an error has taken place with respect to a Board decision and that the decision should be altered, varied or amended in some way, but the only remedy available is judicial review, then the Program or Board should pay the legal costs of the parties who are affected by the order or decision.

The Committee considers the procedure to alter, vary or amend the Board's order by judicial review to be cumbersome and an unnecessary boon to the legal profession. However, unless and until alternate remedies are provided by statute, this procedure must be utilized. When the Board is the cause of the error in the first place and acknowledges that it is, it should not expose the parties to any further hardships by refusing to pay the appropriate legal costs.

Accordingly, the Committee recommends that where the Ombudsman, as a result of a complete investigation of a complaint, formulates the opinion that a decision of the Rent Review Board comes within one of the subheadings of Section 22(1) of The Ombudsman Act and he recommends that the decision be altered, varied or amended in some way in accordance with Section 22(3) of The Ombudsman Act, and where the only means available in law is an application for judicial review, the Rent Review Board, if it agrees with the Ombudsman's opinion and recommendation, should hereafter, to implement the

recommendation, consent to the appropriate order in the Divisional Court which consent shall include all reasonable costs of the complainant on a solicitor and client basis.⁽²²⁾

In the Committee's opinion, the procedure referenced above for judicial review is unnecessary and unwarranted. The Committee commends the Ministry for causing an amendment to be made to Section 13(7) of The Residential Premises Rent Review Act. However, by imposing a 30-day time period for the Board to decide on its own motion to re-hear an appeal, it is in the Committee's opinion, overly restrictive, notwithstanding the procedures implemented by the Board to effectively extend that 30-day period. The Board, by having reserved to itself, the discretion to re-hear an appeal should not be fettered with a relatively short time period. The key is the Board's discretion to re-hear, not the time limit for it to decide if to re-hear.

In the event, if by forthcoming legislation, the Rent Review Board is continued and perhaps given wider authorities, it will become further entrenched as an effective administrative tribunal in this Province. With the passage of time, so do the experience and abilities of the Board increase. In order that justice can be served to those persons who have already appeared before it and who may be adversely affected by decisions in the future, the 30-day time period should be removed.

Accordingly, this Committee recommends that the Ministry of Consumer and Commercial Relations cause an amendment to be made to Section 13(7) of The Residential Premises Rent Review Act by removing therefrom the phrase "within thirty days after making an order".⁽²³⁾

(F) GENERAL SUGGESTIONS MADE BY THE OMBUDSMAN IN CHAPTER 2 OF THE FOURTH REPORT WHICH HE FEELS SHOULD BE BROUGHT TO THE ATTENTION OF THE LEGISLATURE AND WHICH HE HOPES WILL BE GIVEN CAREFUL CONSIDERATION BY THE GOVERNMENTAL ORGANIZATIONS CONCERNED

At page 44 of his Fourth Report, the Ombudsman states that:

"Matters are often brought to my attention in my capacity as Ombudsman which deserve special mention or comment. The Ombudsman is a functionary who is privileged in having a general overview of the operation of the many boards, agencies and commissions of the Province. This general overview of the Provincial bureaucracy enables the Ombudsman to recognize problems and suggest to the various Provincial organizations means of improving the service which is provided to the citizens of Ontario.

This Chapter of the Fourth Report of the Ombudsman contains a number of observations I have made over the past 2½ years and a number of suggestions I feel are warranted. The comments contained in this Chapter are not recommendations made pursuant to Section 22 of The Ombudsman Act. They are more in the nature of general suggestions which I feel should be brought to the attention of the Legislature through this Report and which I hope will be given careful consideration by the governmental organizations concerned."

The Committee commends the Ombudsman for bringing these matters to its attention, to the attention of the Legislature and to the governmental

organizations concerned. The Committee considers comments and suggestions of this type to be an important part of the Ombudsman's function, one which can only benefit all those concerned.

1. Social Assistance Review Board

As a result of the experience of the Ombudsman's office, the Ombudsman has concluded that the relevant provisions of The Family Benefits Act do not give to the Social Assistance Review Board the power to reconsider and vary its own decisions on its own motion. The Ombudsman correctly asserts that the relevant legislation (Section 12(11) of The Family Benefits Act) only permits the Board to reconsider one of its decisions if and only if a party to the proceedings has launched an application with the Board for such reconsideration. Further, the Board's power to reconsider and vary may only be exercised after a fresh hearing has been conducted in consequence of one of the parties applying.

At page 45 of this report, the Ombudsman states that:

"It is my view that the combined effect of these limitations on the Board's power to reconsider and vary its decisions precludes the Board from implementing any recommendations made by the Ombudsman which call for the variation of one of the Board's decisions, even if it wished to do so, without first receiving an application for reconsideration from one of the parties to the original proceedings and then holding another hearing."

The Ombudsman has concluded that the present state of the legislation has effectively frustrated his ability and that of the Social Assistance Review Board to implement any recommendation which he may make to it pursuant to Section 22(3) of The Ombudsman Act.

To remedy this situation, the Ombudsman has suggested that The Family Benefits Act be amended to give to the Social Assistance Review Board the power on its own motion to reconsider and vary its own decisions.

The Chairman of the Social Assistance Review Board, speaking on behalf of the Board and on behalf of the Ministry of Community and Social Services, concurred with the Ombudsman's suggestion that an amendment along the lines suggested by the Ombudsman would be useful. The Committee understands the Minister's only concerns in this area are that any amendments to The Family Benefits Act not have the effect of expanding the role of the Board into an investigative one. The Committee agrees with the Ministry's concern in this regard.

The Committee concurs with the Ombudsman, the Chairman of the Social Assistance Review Board and the Minister of Community and Social Services that an amendment to The Family Benefits Act is necessary in order to permit the Ombudsman's process to function smoothly and completely in this area. It wishes especially to commend the Chairman of the Social Assistance Review Board and the Minister for the assistance and co-operation they have given to the Ombudsman and this Committee in an effort to resolve the anomaly raised by the present legislation.

The Committee therefore recommends that the Minister of Community and Social Services cause Section 12(11) of The Family Benefits Act to be repealed and the following substituted therefor:

"The Board of Review may, on application of any party or on its own motion and with or without a hearing, reconsider and vary any decision made by it and if the Board hears from the parties to the proceedings in which

the original decision was made, the provisions of this Section, except subsection (4), apply mutatis mutandis to the proceedings on such reconsideration."⁽²⁴⁾

2. Workmen's Compensation Board

At pages 47 and 48 of his Fourth Report, the Ombudsman states that: "In dealing with these complaints against The Workmen's Compensation Board, I have become concerned that claimants before the Board have no means of informing themselves of the "operative law" which governs their cases.

The Workmen's Compensation Act is a particularly "skeletal" statute in that it confers a great deal of discretion in the disposition of claimants' cases on the Board. However, the Board does not publish either its adjudicative policies or its past decisions.

During the course of the investigation of complaints against The Workmen's Compensation Board, the investigators in the office of the Ombudsman have encountered numerous issues concerning the entitlements to Workmen's Compensation benefits which are not dealt with by the provisions of The Workmen's Compensation Act. These issues are, however, invariably dealt with by what can only be referred to as "Board policy".

The Ombudsman stressed that whenever officials of his office have requested necessary information respecting Board policy, officials of the Board

The Chairman of The Workmen's Compensation Board advised the Committee that he knew of no time when a request has been received for a statement of Board policy that has been denied to any "appropriate enquirer" in the same manner and to the same extent as it has been provided to the Ombudsman. The Chairman included in his definition of appropriate enquirers, M.P.P.'s, persons representing an individual in the appeal process, and this Select Committee. He did express concern that any decision to publish policies, manuals or Board decisions not burden the fiscal resources of The Workmen's Compensation Board. The main concern expressed by the Chairman to the Committee in respect of the Ombudsman's suggestion re publication of policies or manuals was the attendant costs. He stated that the Board's concern would be alleviated if the publication of a manual was done on a basis wherein the total cost thereof was borne by the person requesting same.

On the question of the publication of Board manuals and policies relative to the adjudication process, the Committee decided it could make no decision on the matter without having first received and reviewed the policies and manuals in question. Accordingly, pursuant to a request from the Committee, the Board delivered copies of various manuals, Board policy papers and administrative directives respecting adjudication at all levels within the Board. Attached to this Report as Schedule "H" is a list of the documents provided to the Committee.

The Committee is of the opinion that publication of the Board's adjudicative policies, manuals and directives to persons, on a paid subscription basis at the Board's actual cost similar to a legal reporting service, would assist persons affected by the Board's adjudicative process to understand and appreciate that process. It would also assist in the resolution of appeals of Board decisions at all levels.

have been most co-operative and open in providing written statements outlining same. The Ombudsman, however, expressed concern that:

"the information which our office is able to obtain is not made available in any organized fashion to those persons and groups who are most affected by or interested in it, namely, claimants before the Board and their representatives. In my view, this is a fundamentally unacceptable situation and I suggest that the following remedial steps should be taken:

1. The Workmen's Compensation Board should publish and make available to the public its adjudicative policies and manuals.
2. The Workmen's Compensation Board should publish an index (without reference to the names of parties or witnesses), its Appeal Board decisions and reasons therefor."

The Ombudsman has clearly stated his goal in consequence of the Board's publication of those policies, manuals and decisions as:

- (1) permitting claimants and their representatives to inform themselves and to address their evidence and arguments to points and issues which the Board will consider relevant when adjudicating claims;
- (2) assist claimants and their representatives to ensure that the Board is acting within the limits of and fulfilling the purposes of The Workmen's Compensation Act, and
- (3) that ignorance of the "operative law" of The Workmen's Compensation Board will be substantially removed.

The Committee recommends that The Workmen's Compensation Board publish a list, for distribution to the public, of its policies, manuals and directives respecting the adjudication process within the Board at all levels. This list should describe the documentation in the same detail as contained in Schedule "H" hereto. That list shall also contain, for the information of the public, the Board's unit cost to supply these items.⁽²⁵⁾

The Committee further recommends that The Workmen's Compensation Board make all or any portion, as the case may be, of its policies, manuals and directives relative to the adjudicative process at all levels, available to the public at the Board's actual cost. Any amendments, alterations, deletions and additions relative to the items contained in these documents shall also be made available to the public on the same cost basis.⁽²⁶⁾

With respect to the Ombudsman's suggestion that the Board's appeal decision be published, the Committee does not agree that the process will be meaningfully improved. The Committee sees as many disadvantages to such a suggestion as advantages outlined by the Ombudsman.

(3) Psychiatric Facilities

At page 49 of his Fourth Report, the Ombudsman expresses some concern respecting the availability of Regional Referral Units in regional psychiatric hospitals. Accordingly, he suggests that the Ministry of Health give serious consideration to expediting the establishment of such units. The Assistant Deputy Minister of Health advised the Committee that, at present, there are two units in existence in Ontario, one in Toronto and the other in St. Thomas. He advised the Committee of a plan to proceed with the construction of two additional units in 1978. In addition, and fiscal resources permitting, six additional sites are being considered in Ontario. The Committee commends the

Ministry of Health in this respect. The Committee considers the Minister's response to the Ombudsman's suggestion to be most positive.

(G) SPECIFIC CASE SUMMARIES WHEREIN RECOMMENDATIONS MADE BY THE OMBUDSMAN TO THE GOVERNMENTAL ORGANIZATIONS HAVE BEEN DENIED

MINISTRY OF HEALTH

(1) Complaint Summary #45 (page 192)

This was a complaint essentially of bias in respect of the Hospital Appeal Board established pursuant to Section 47 of The Public Hospitals Act. The complainant is a duly licenced member of the medical profession in Ontario whose appeal from a decision of the board of the Public Hospital refusing his application, was dismissed by the Hospital Appeal Board. The Ombudsman perceived the central issue raised by this complaint and by his subsequent investigation, to be access by a physician and that physician's patients to the public hospital in Ontario that either the physician and/or the patients choose. The facts surrounding the complaint, the Ombudsman's investigation and the results thereof, are set out in the text of the Ombudsman's Fourth Report (pages 172-179).

After the Ombudsman had concluded his investigation, he formed the opinion that the statutory composition of the Hospital Appeal Board and the particular quorum which presided at the complainant's appeal, appeared to be improperly discriminatory within the meaning of Section 22(1) of The Ombudsman Act notwithstanding that the actions of the Board of the Public Hospital and the Hospital Appeal Board were in conformity with the relevant provisions of The Public Hospitals Act. The Ombudsman found that the present legislation does not prevent the membership of the Hospital Appeal Board from consisting of persons who are either past or present members of a public hospital board. The

Ombudsman noted that the Board as presently constituted has only one member who is not either a past or a present member of a board of a public hospital. Further, the Ombudsman noted that the statutory quorum permitted under the present legislation has no stipulation of membership within the total Board panel. The quorum of the Board which heard the complainant's appeal in fact consisted of members all of whom were either past or present members of hospital boards. Accordingly, the Ombudsman recommended to the Ministry of Health that:

- (a) the Ministry consider what changes should be made to The Public Hospitals Act (Section 47) to give a better effect to the principle of a widely distributed membership of the Board, even if reduced to a quorum. In making the recommendation, the Ombudsman noted that a statutory limitation period should be considered on the appointment of members who are either past or present members of hospital boards;
- (b) the Ministry inquire into the provisions of The Public Hospitals Act with a view to preventing acts flowing from Sections 44 to 50 thereof, which may be improperly discriminatory. The Ombudsman further suggested with respect to this recommendation that the Ministry consider assigning the task of such an inquiry to an organization such as The Ontario Council of Health.

In reply to the Ombudsman's recommendation, the Deputy Minister stated that in his opinion, the substance of the Ombudsman's recommendations were outside of his jurisdiction and accordingly, would only be accepted as informal observations and suggestions. The Deputy Minister interpreted the Ombudsman's first recommendation as affecting the Hospital Appeal Board which, in his opinion, does not come within the definition of a "governmental

"organization" as defined by The Ombudsman Act. He interpreted the Ombudsman's second recommendation as applying to private hospital boards which everyone acknowledges to be outside the Ombudsman's jurisdiction.

The Ombudsman replied to the Deputy Minister's response in part as follows:

"If I understand your position, it is that although the Hospital Appeal Board may well be a board of the Government of Ontario, it is not an administrative unit of the Government and accordingly cannot be a "governmental organization" within the meaning of The Ombudsman Act, 1975. I regret this objection was not raised early in the investigation so that it could have been dealt with then.

As it is a board, all the members of which are appointed by the Lieutenant-Governor in Council with a province-wide mandate to serve by hearing grievances of persons who have applied to or been suspended by hospital boards all over Ontario, it appears to us that the Hospital Appeal Board fulfills the criteria of an administrative unit of the Government of Ontario. Initially created in 1972 following the recommendation of the Grange Commission, the Board's day-to-day business is, as I understand it, handled by the Health Boards Secretariat in the Ministry of Health. Our practice is generally to consider the criteria set out by the case law which defines Crown agencies in attempting to determine which bodies are

within the Ombudsman's jurisdiction, as well as considering the legislation which creates the body in question and gives it its powers.

Your further comments about the difficulties in describing a decision by a tribunal as being "in accordance with" the provision of a statute establishing a tribunal are well taken. In my view, the intention of the Legislature in enacting section 22(1)(b) of The Ombudsman Act, 1975 in authorizing the Ombudsman to make a recommendation when in my opinion a decision, act, etc. may have been in accordance with ... a provision of any Act that ... may be ... improperly discriminatory was to allow me to consider the legislation itself even when decisions and actions are made in compliance with it. Legislation itself can never be improperly discriminatory; it is the application of the legislation which can be. It seems to me that it is only by its operation that legislation can ever have any effect. In this case, there is clearly a nexus between the provision of the Act creating the Board and the decisions and actions complained of. In my view, the provision of section 22(1) of The Ombudsman Act, 1975 should be interpreted broadly so as to include matters such as this. If it is not, the provision would have no clear meaning."

The Assistant Deputy Minister of Health and a member of the Ministry's legal staff appeared before the Committee to further explain the

Ministry's position. The Committee noted that the Ministry has not considered nor commented upon the substance of the Ombudsman's recommendation due largely to its position respecting jurisdiction.

The Committee is of the opinion that the Ombudsman did have jurisdiction to investigate this complaint and to make the recommendations in question to the Ministry, to the extent that those recommendations and required action of the Ministry apply to the Public Hospital Appeal Board and the relevant statutory provisions of The Public Hospitals Act. The Committee views the thrust of the Ombudsman's recommendations to apply to the manner in which the Hospital Appeal Board fulfills and appears to fulfill statutory functions. The Committee believes that any amendment to the relevant legislation which can remove any appearance of improperly discriminatory action as perceived by the Ombudsman, is to be encouraged.

Accordingly, the Committee recommends that with respect to Complaint No. 45 in the Ombudsman's Fourth Report, the Minister of Health implement as soon as reasonably practical, the recommendations of the Ombudsman as set out in his report dated December 16, 1977.⁽²⁷⁾

WORKMEN'S COMPENSATION BOARD

(1) Complaint Summary #75 (page 237)

The complaint initially received and investigated by the Ombudsman's office was that an increase from 10% to 15% of a pension benefit received by a workman, since deceased, was not commensurate with the impairment of his earning capacity caused by the injury. The facts of the complaint and the Ombudsman's investigation are set out in the Complaint Summary at pages 237-240 of the Ombudsman's Fourth Report. During the course of the Ombudsman's investigation, a second issue came to the Ombudsman's attention with respect to the appropriate retroactive date of the increase of the pension by 5%.

As a result of the investigation by the Ombudsman's office, the Ombudsman formed the opinion that the 15% assessment for pension benefits was satisfactory in the circumstances. However, he formed the opinion that the choice of November, 1968 as the effective date for the 5% pension increase was unreasonable and should have been March 22, 1965, the date that the pension benefit in question commenced. Accordingly, the Ombudsman recommended that the increase of the pension benefit from 10% to 15% should be made retroactive to March, 1965.

The Workmen's Compensation Board declined to implement the Ombudsman's recommendation on two grounds. Firstly, that since the matter of retroactivity was not dealt with by the Appeal Board Panel in question, the Ombudsman did not have jurisdiction to investigate and make recommendations in respect to that issue. Secondly, the effective increase date for the pension increase was consistent with the relevant Board policy.

The Committee heard from representatives of the Ombudsman's office most closely connected with this complaint as well as a member of the Appeal Board Panel which considered the Ombudsman's recommendation. In the Committee's opinion, the Ombudsman did have jurisdiction to investigate the issue which came to his attention during the course of his investigation and to formulate an opinion and make a recommendation in respect thereto pursuant to Section 22 of The Ombudsman Act. However, in these circumstances, there is an obligation on the Ombudsman to fully explain to the governmental organization in question this so-called secondary issue and to formulate clear and unequivocal opinions and recommendations in respect thereto.

The Committee regrets that the Ombudsman's Report to The Workmen's Compensation Board pursuant to Section 22(3) is unequivocal with respect

to the opinion and recommendation made. The wording of the Report caused confusion in the minds of the Committee members as well as the members of The Workmen's Compensation Board. The Committee cannot expect a governmental organization, The Workmen's Compensation Board in particular, to adequately and appropriately respond to a recommendation made by the Ombudsman to alter a Board decision in some way, when the recommendation does not identify the Board decision in question.

However, both the Ombudsman's office and The Workmen's Compensation Board agreed after discussions with the Committee, that the issue for determination is whether the individual in question is entitled to a further 5% pension benefit increase for the relevant periods March, 1965 to November, 1968. The Committee notes that there is no policy or procedure which would prevent an Appeal Board Panel of The Workmen's Compensation Board from holding a hearing with respect to this issue without involving the individuals concerned in the full Board procedures at the lower levels of adjudication. Accordingly, the Committee recommends that an appeal board panel of The Workmen's Compensation Board conduct a hearing forthwith for the purpose of determining whether, with respect to the complaint described in Complaint No. 75 of the Fourth Report of the Ombudsman, the 5% pension increase should, in the circumstances, be more appropriately commenced as at March, 1965.⁽²⁸⁾

The Committee is of the opinion that much of the confusion surrounding the Ombudsman's Report and the uncertainty in the minds of The Workmen's Compensation Board would have been removed had The Workmen's Compensation Board at the earliest possible time, sought a clarification and conducted full discussions with the Ombudsman's office. It might very well have yielded a different result in respect of the Board's position and would certainly

have resulted in a more meaningful and comprehensive response from the Board which might have affected the Ombudsman's judgment as to the adequacy and appropriateness thereof.

(2) Complaint Summary #76 (pages 240-245)

This is a complaint respecting a decision of the Appeal Board of The Workmen's Compensation Board dated October 29, 1976, which denied the complainant's appeal for entitlement to a sum of \$249.00, being the cost of a commercial type infra-red lamp, to permit the complainant to self-administer heat treatments to his back. The Board, in that decision, confirmed an earlier decision of the Medical Aid Branch of The Workmen's Compensation Board to award the complainant \$25.00 to cover the cost of a domestic type heat lamp. It was the complainant's contention on the appeal that the lamp for which the Medical Aid Branch had granted entitlement was not adequate and that the more expensive commercial quality type lamp would more adequately meet his needs.

The facts surrounding the complaint and the Ombudsman's investigation thereof are set out in the text of the Complaint Summary in the Ombudsman's Fourth Report.

The Ombudsman, when he informed the Board by letter of his intention to investigate, requested a copy of the Board's policy referred to in a summary of information dated September 28, 1976 which stated that "an upright lamp which is classed as commercial equipment is not a treatment item allowed for under the Board's present policy and regulations.". The Board shortly thereafter provided the Ombudsman's office with a statement of policy respecting infra-red lamps which was stated to be in accordance with Section 51 of The Workmen's Compensation Act which section empowers the Board to grant medical aid as defined by the section during a period of disability. The document

provided to the Ombudsman's office is entitled "POLICY RE INFRA-RED LAMPS". The Ombudsman's office, for the purpose of their investigation and subsequent report by the Ombudsman, presumed the document reflected Board policy respecting medical entitlement to infra-red lamps.

Following the Ombudsman's investigation, he formed the opinion, pursuant to Section 22(1) of The Ombudsman Act, that the decision of the Appeal Board to deny the complainant's claim for entitlement was unreasonable, "particularly given the evidence which substantiates that an upright lamp would better meet (complainant's) needs as opposed to the complete lack of evidence to substantiate the decision that the less expensive model is more than adequate for the purpose of applying heat.". Accordingly, the Ombudsman recommended that the decision of the Board be cancelled and that there be an allowance to the complainant for the purchase of the commercial type lamp.

The Board declined to implement the Ombudsman's recommendation on the grounds that the commercial type of heat lamp is unnecessary for the complainant's needs and that the domestic variety "which is not a replaceable item under the Medical Aid regulations is more than adequate for the purpose indicated".

The Committee was advised by representatives of the Board that Section 51 of The Workmen's Compensation Act does not prohibit the Board from granting entitlement to the complainant for the purchase of the commercial type heat lamp requested. Rather, the Board has over the years, developed certain criteria or conditions within its administration to determine when and to what extent it will exercise its discretion under Section 51 and grant medical aid of the type sought in this case. The document provided to the Ombudsman is not in fact a policy of the Board but merely a statement of someone within the Medical

Aid Branch of how that branch should exercise its discretion in situations of this kind.

This statement also appears to be inconsistent with the operative guidelines of the Medical Aid Branch, dated May 1960, with respect to infra-red lamps. That directive provides that there is no entitlement to compensation for infra-red lamps. It appears therefore to the Committee that the Medical Aid Branch of The Workmen's Compensation Board, at least in this case, is applying a policy which is inconsistent with the prevailing directives of that Branch. The Medical Aid Branch in conferring a benefit for the purchase of a domestic type heat lamp has, in effect, contradicted the directive. Accordingly, the Committee must assume that in appropriate circumstances, The Workmen's Compensation Board will grant entitlement to an infra-red lamp, the nature and quality of which will be determined by the circumstances of the particular request.

The Board Commissioner appearing before the Committee advised it that the Board's decision to disallow this claim centred not around the issue of whether an infra-red lamp should be provided, but what type of lamp was most suitable. The Board concluded that the domestic less expensive type was adequate for the purpose intended. The Committee was also advised by the Board representative that if at the date of the Appeal Board hearing the claimant, on the advice of his doctor, had been advised to purchase a heat lamp of the commercial type variety and that heat lamp had been previously purchased by the complainant, the Board would probably have exercised its discretion in favour of the award.

The Committee recommends that The Workmen's Compensation Board implement the Ombudsman's recommendations made in Complaint No. 76

of his Fourth Report by granting the complainant entitlement to the sum necessary to purchase the commercial type heating lamp which has been previously requested.⁽²⁹⁾ The Committee estimates the total cost to process this complaint (Ombudsman, Workmen's Compensation Board and this Committee) to amount to several thousands of dollars. The cost of the complaint in issue is \$249.00. The Committee recommends that hereafter the office of the Ombudsman and The Workmen's Compensation Board exercise a more realistic approach in the resolution of matters involving a relatively minor amount of money.⁽³⁰⁾

(3) Complaint Summary #77 (pages 245-248)

This complaint concerns a decision of the Appeal Board of The Workmen's Compensation Board dated June 3, 1976 which denied the complainant compensation for a pre-existing spinal condition on the grounds that the cause of the condition is not related to anything which arose out of or occurred during the course of employment. The complainant contended on the appeal that the accidents which occurred during the course of employment at the material times aggravated in some way the pre-existing spinal condition and accordingly, he should, in some proportion, be compensated by the Board.

The circumstances of the complaint and the Ombudsman's investigation are set out in the text of the Ombudsman's Fourth Report.

After the Ombudsman's investigation was completed, he formed the opinion that the Board should confer the benefit of doubt on the complainant and should grant a permanent partial disability pension. In his opinion, the Appeal Board decision referred to above unreasonably denied the complainant entitlement to such a pension. Accordingly, he recommended that The Workmen's Compensation Board vary the Appeal Board's decision of June 3, 1976 and award a permanent partial disability pension to the complainant for the residual disability of the relevant compensable injuries sustained during the course of employment.

The Committee understands the basis of the Ombudsman's opinion to be that the benefit of the doubt should be granted in that there is no unequivocal opinion by any physician to the effect that the accidents occurring during the course of employment either did or did not aggravate the pre-existing spinal condition. In fact, the Ombudsman's office is of the view that the prevailing medical opinions more support the complainant's assertion rather than the Board's.

The Board declined to implement the Ombudsman's recommendation on the grounds that there is no evidence to support the contention that the pre-existing condition and the symptoms emanating therefrom has been significantly changed by the relevant accidents which occurred during the course of employment. The Board further expressed the opinion that any disability which might be present and measurable at the present time would be the result of the underlying pre-existing condition and not the work incidents.

The Board representative appearing before the Committee advised that the Board never considered applying the doctrine of benefit of doubt because the Board felt that the prevailing medical opinions supported the Board's conclusions.

A member of the Appeal Board Panel which made the decision of June 3, 1976 appeared before the Committee. He advised that a certain medical opinion referred to by the Ombudsman in his Report to the Board pursuant to Section 22(3) of The Ombudsman Act to the effect that it would be quite impossible to produce medical evidence stating that the complainant has no residual disability as a result of the compensable accidents was not considered by the Board in formulating its response to the Ombudsman's Report.

The Ombudsman's office was unable to produce a written medical opinion in the terms referred to above. The Ombudsman's Report merely paraphrases a conversation a member of the Ombudsman's staff had with the doctor in question. The Committee considers the opinion of the physician in question to be critical and certainly if confirmed by this doctor in a written medical report, would make the application of the doctrine of benefit of the doubt, if, as and when formulated by the Board, to be applicable. Accordingly, the Committee recommends that the Ombudsman forthwith obtain a medical report from the doctor in question in respect of the opinion attributed to him in the Ombudsman's Report pursuant to Section 22(3) of The Ombudsman Act. That report when received by the Ombudsman shall be forthwith transmitted to The Workmen's Compensation Board.⁽³¹⁾ The Committee further recommends that The Workmen's Compensation Board upon receipt of that medical report conduct a hearing pursuant to Section 75 of The Workmen's Compensation Act and that the Appeal Board Panel presiding at that hearing consider the application of the policy of benefit of the doubt to the circumstances of this case.⁽³²⁾

The Committee is mindful that The Workmen's Compensation Board will consider all relevant medical evidence received by it either from the doctor in person or by means of a medical report signed by the doctor in question. The Committee accordingly recommends that hereafter the Ombudsman ensure that any medical evidence relied upon by him in support of his opinions and recommendations be obtained in written reports which can be readily made available to The Workmen's Compensation Board.⁽³³⁾

The Committee has in previous reports commented upon the obligations incumbent on the Ombudsman in performing Ombudsman functions and in particular making reports pursuant to Section 22(3) of The Ombudsman Act. The

Committee wishes to say that there are also obligations on the governmental organizations in question who receive those reports to make their responses as complete and thorough as possible. Where, in the preparation of those responses, the governmental organization believes some aspect of the Ombudsman's Report requires clarification or if additional information is necessary, the governmental organization should obtain the information from the Ombudsman or his office as quickly as possible. The Committee is of the opinion that a freer dialogue between the Ombudsman and the governmental organization in question at this stage of the Ombudsman's process will probably eliminate a number of cases wherein recommendations are denied. In the Committee's opinion, this case is one of those.

The Committee notes the assurance by the Vice Chairman of Appeals of the Workmen's Compensation Board that upon receipt from the Ombudsman's office of a written report from the doctor in question an Appeal Board Panel will be constituted immediately for reconsideration of this case pursuant to Section 75. If, by the time this report is tabled in the Legislature, the Board has in fact done this, then the Committee recommends that it advise it and the Ombudsman of the Board's decision as soon as it is rendered.⁽³⁴⁾

(4) Complaint #78 (pages 249-251)

The complainant herein contended that for the seven-month period immediately prior to his sixty-fifth birthday, he was entitled to receive special supplementary benefits pursuant to Section 42(5) of The Workmen's Compensation Act in addition to the 15% permanent disability benefits already awarded by the Board. The Board, in an Appeal Board decision dated August 12, 1976, concluded that the person was not entitled to the Section 42(5) benefits as he did not comply with the requirements of the section. The facts of the complaint and

the Ombudsman's investigation of the Board's decision of August 12, 1976 are set out in the Case Summary.

During the course of the Ombudsman's investigation, his office requested a statement of the Board's policy respecting special supplement benefits payable under Section 42(5) to persons up to retirement age. The Board provided the Ombudsman's office with a statement by the Executive Director of the Claims Services Division as to how that Division deals with application for supplement benefits to persons up to age 65. The Ombudsman formulated his opinions and made the recommendation in this case largely as a result of his consideration of that statement of Board policy against the background of the facts disclosed by his investigation.

At the Committee's request, the Board supplied it with the Board's policy respecting the supplementary awards under Section 42(5). The policy supplied to the Committee was for general application rather than the specific to age 65 circumstances requested by the Ombudsman's office. In any event, the policy supplied to the Committee is not the same as the statement of Board policy supplied to the Ombudsman's office. The reading and application of either is capable of inconsistent results and conclusions. In these circumstances, it is inconceivable to the Committee how the Ombudsman and The Workmen's Compensation Board could ever see "eye-to-eye" on the matter of a Board decision wherein Board policy is at issue. Unless and until the Ombudsman and The Workmen's Compensation Board approach a decision on the same factual basis, there will always be unnecessary grounds for disagreement.

After the Ombudsman concluded his investigation, he formed the opinion that the decision of The Workmen's Compensation Board not to grant this person temporary supplementary benefits pursuant to Section 42(5) was

"unreasonable, unjust, oppressive, and improperly discriminatory." pursuant to Section 22(1)(b) of The Ombudsman Act. Accordingly, he recommended that the decision of the Board dated August 12, 1976 be revoked and that the benefits be made payable to the complainant to more appropriately compensate him for the seven months in question. The Board declined to implement the Ombudsman's recommendation on the grounds that the complainant insisted he was 100% disabled at the material times and accordingly, by the relevant wording of Section 42(5), he is precluded from receiving supplementary benefits under that Section.

The relevant provision of Section 42(5) reads:

"... provided that he co-operates in and is available for a medical or vocational rehabilitation programme which would, in the opinion of the Board, aid in getting him back to work, or accepts or is available for employment which is available and which in the opinion of the Board is suitable for his capabilities."

In the Board's opinion, anybody who is 100% disabled is not capable of accepting or being available for employment which is available and which, in the opinion of the Board, is suitable for his capabilities. In other words, no one who is 100% disabled may participate in benefits under this Section to age 65 whether or not medical or vocational rehabilitation aids that person in getting back to work.

The Committee heard from the appropriate representatives of the Ombudsman's office and from a member of the Appeal Board Panel of The Workmen's Compensation Board who rendered the August 12, 1976 decision and who considered the Ombudsman's opinion and recommendation.

The Committee does not agree that a person who is 100% disabled but who nevertheless "co-operates in and is available for a medical or a vocational rehabilitation programme which would in the opinion of the Board aid him in getting back to work" is precluded from benefits under Section 42(5) of The Workmen's Compensation Act.

However, the Committee notes that Section 42(5) of the Act requires that the impairment of one's earning capacity be "significantly greater than is usual for the nature and degree" of the injury. The Ombudsman in his Report and recommendations does not appear to have addressed himself to that issue, which fact was brought to the Committee's attention by the Board representatives. In the Committee's opinion, the Ombudsman did not fully address himself to the requirements of Section 42(5) in formulating his opinion referable to the Board's decision. Accordingly, the Committee has no alternative but to decline to support the Ombudsman's recommendation in this regard. However, the Committee recommends that the Ombudsman conduct such further investigation as he deems necessary in respect of the issue of the prerequisite for supplementary benefits under Section 42(5) for the purpose of determining whether he can conclude the person's impairment of earning capacity is significantly greater than is usual for the nature and degree of injury.⁽³⁵⁾ In the event that he is able to form the opinion that the impairment of earning capacity is significantly greater than is usual for the nature and degree of injury, then he shall so report same to the Board who shall, in that event, hold a rehearing of this case pursuant to Section 75 of The Workmen's Compensation Act.⁽³⁶⁾

(5) Complaint #79 (pages 251-254)

This is a complaint in respect of an Appeal Board decision of The Workmen's Compensation Board dated March 4, 1976, confirming a single

Commissioner's decision dated August 8, 1975 which disallowed a claim for compensation for payment of temporary total disability payments in relation to certain back disabilities said by the complainant to have been sustained in consequence of an accident occurring during the course of employment.

The circumstances of the complaint and the Ombudsman's investigation are set out in the text of the Ombudsman's Fourth Report.

After the Ombudsman's investigation was concluded, he formed the opinion that the Appeal Board Panel was unreasonable in accepting their own medical consultant's opinions over the views expressed both by the complainant's treating chiropractor and the general surgeon who examined the complainant some sixteen months after the accident. He accordingly determined that the Appeal Board Panel was unreasonable in denying the complainant the benefit sought, and he recommended that the Board reconsider its decision and vary its order in order that the complainant be entitled to receive temporary total benefits from September 4, 1974 until such time as it is established that the complainant was medically fit to return to employment within the complainant's capabilities. The Ombudsman further recommended that entitlement in this claim should be awarded for the aggravation of a pre-existing back disability.

The Workmen's Compensation Board declined to implement the Ombudsman's recommendation substantially on the grounds that the prevailing evidence is that the complainant's symptoms relevant to the back disability were not caused by or aggravated by the work accident.

The Ombudsman and The Workmen's Compensation Board have placed a different interpretation on the prevailing medical and related evidence referable to this complaint and accordingly, have come to opposing conclusions respecting the causal connection between the work-related incident and the

symptoms referable to the complainant's back. The Committee is thus placed in a position of deciding in effect, which of the opinions, the Ombudsman's or the Board's, it prefers. Stated another way, the Committee must consider whether the Board's refusal to implement the Ombudsman's recommendation, which is based on its genuine interpretation of the evidence, is adequate and appropriate notwithstanding that it differs from the Ombudsman's.

There are some who would urge the Committee and the Legislature when all things are equal as in this case, to support the recommendation of the Ombudsman notwithstanding the appropriateness or adequacy of the governmental organization's position. The Committee cannot agree with this view. It envisions many occasions where notwithstanding that the governmental organization decides not to implement the Ombudsman's recommendation, that decision is nevertheless adequate and appropriate. It is open for this Committee to agree with the decision of the governmental organization just as it is for the Committee to support the Ombudsman's recommendation in any given case.

To blindly support an Ombudsman's recommendation, while it may in the specific instance benefit the complainant would in the Committee's opinion have a serious deleterious affect on those affected within the governmental organization specifically and the public service generally. This could in turn undermine the necessary relationship between the Ombudsman and the public service.

The Ombudsman in this province must recognize that his recommendations will not always win the day. Likewise, governmental organizations must realize that they cannot consistently deny Ombudsman recommendations and not endure appropriate consequences through this Committee and the Legislature. The Ombudsman process of which in this context this Committee plays a very great part, must have fairness as a fundamental ingredient.

However, in this case the Committee is not able to conclude that the response of the Board was adequate and appropriate. Accordingly, the Committee recommends that The Workmen's Compensation Board implement the recommendation of the Ombudsman as set out in his report made pursuant to Section 22 of The Ombudsman Act.⁽³⁷⁾

(6) Complaint Summary #80 (pages 254-256)

This is a complaint respecting a decision of an Appeal Board of The Workmen's Compensation Board dated September 9, 1970 which denied entitlement to compensation benefits for a period of approximately 13 months immediately prior to the complainant reaching age 65. The Board in its decision found the complainant not to have any physical disability as a result of his employment under the provisions of The Workmen's Compensation Act. Although the Board recognized that the complainant is sensitive to an irritant found in the environment of his previous employment, it found no indication that the complainant is physically restricted in performing other types of employment. Particularly, the Board denied any further compensation to the complainant from September 5, 1968 because the allergic reaction manifested through the particular substance found in his previous working environment, only afflicted the complainant while he was working in proximity to the substance.

The circumstances of the complaint and the Ombudsman's investigation are set out in the detailed Case Summary found in the Ombudsman's Fourth Report.

After the Ombudsman's investigation was completed, he formed the opinion that the decision of the Board referred to above, was wrong. He accordingly recommended that the decision of the Appeal Board be varied to grant retroactive entitlement beyond September 5, 1968 under Section 42(5),

such benefits to cover the period up to the date of the complainant's sixty-fifth birthday in accordance with the Board's practice. In coming to the opinion he did, the Ombudsman disagrees with the interpretation of "permanent disability" as found in Section 42(5) of The Workmen's Compensation Act as enacted in R.S.O. 1970, Chapter 505. Further, he disagrees with the Board's finding that the symptoms displayed by the complainant are an aggravation of a condition pre-existing the period of employment.

The Workmen's Compensation Board declined to implement the Ombudsman's recommendation on the grounds that the complainant's symptoms were caused by an aggravation of a pre-existing condition which had not resulted in any residual physical disability. The Board concluded that the complainant had an industry exposure and it recognized the allergic reaction on an aggravation basis and compensated the complainant accordingly. The complainant subsequently removed himself from the work environment that the allergic condition could not tolerate. The Board found there was no residual disability but the allergic condition remained unchanged.

The Workmen's Compensation Board representative appearing before the Committee advised that the key to the Board's decision was not whether the condition should be classified as an aggravation of a pre-existing state or whether it arose out of the work environment. Rather, the Board's position revolves around its interpretation of Section 42(5) of The Workmen's Compensation Act in force at the material time.

That Section stated that:

"Where the Board considers it more equitable, the Board may award compensation for permanent disability having regard to the difference between the average weekly

earnings of the workman before the accident and the average amount that he is earning or is able to earn in some suitable occupation after the accident, and the compensation may be a weekly or other periodical payment of 75% of such difference, and regard shall be had to the workman's fitness to continue in the employment in which he was injured or to adapt himself to some other suitable occupation.".

On the one hand, the Ombudsman defines permanent disability in that Section to mean disability from the specific work activities performed by the workman at all material times when the injury occurred. (Injury as defined by The Workmen's Compensation Act.) This interpretation is made notwithstanding the workman's ability to function in work activities wherein the circumstances precipitating the injury are absent.

The Workmen's Compensation Board on the other hand, defines permanent disability as relating to all forms of work activities. In other words, permanent disability may not be applied in the specific sense of employment, but rather in the general sense.

The Committee notes that the operative Section 42(5) provides that the Board shall have regard "to the workman's fitness to continue the employment in which he was injured or to adapt himself to some other suitable occupation" when considering whether it will award compensation for permanent disability. That phrase may be taken as qualifying the definition of permanent disability for the purpose of this Section. Further, the Committee was advised that The Workmen's Compensation Board has compensated persons on a permanent disability basis who have been injured in some way but who are able to

return and resume substantially the work activities that were performed prior to the injury. In other words, The Workmen's Compensation Board has defined permanent disability in relation to a specific injury and a specific disability from performing in some degree, specific work activities.

The Committee is of the opinion that the complainant's age at the time of the injury and his ability, for whatever reason, to obtain other suitable employment between the time of the injury and age 65 are important factors to consider when deciding whether he is entitled to compensation within the meaning of the old Section 42(5). It did not appear to the Committee that either the Ombudsman or the Board addressed themselves to those issues. Accordingly, the Committee recommends that the Board hold a hearing pursuant to Section 75 of The Workmen's Compensation Act to reconsider the complainant's entitlement to benefits under the old Section 42(5). At that hearing, the Board is to specifically consider the two factors set out above.⁽³⁸⁾

(7) Complaint #81 (pages 256-261)

This complaint concerns a decision of the Appeal Board of The Workmen's Compensation Board dated January 21, 1976 denying the complainant's application for an increase in his permanent disability award to something in excess of 50%. It was the contention of the complainant on the appeal that the symptoms which are presently disabling the complainant are more than 50% caused by the aggravating conditions of his employment. The Appeal Board, while finding that the complainant may in fact be more than 50% disabled, concluded that the medical evidence presently available cannot support that any disability greater than 50% is in any way related to the employment aggravation of the condition in question.

The circumstances of the complaint and the Ombudsman's investigation are set out in the text of the Ombudsman's Fourth Report.

After the Ombudsman's investigation was completed, he formed the opinion that the decision of The Workmen's Compensation Board was unreasonable and unjust. Accordingly, he recommended that the amount of the complainant's pension be substantially increased, such increase to be made retroactively from October 25, 1974.

The Workmen's Compensation Board declined to implement the Ombudsman's recommendation on the grounds that in their opinion, the granting of the disability pension and the amount in the proportion of 50% was generous in the circumstances and that the prevailing medical opinion could not support an increase.

The Committee in this case is asked to consider whether the assessment of a 50% disability as set by the Board or an assessment of a disability "substantially greater than 50%" as recommended by the Ombudsman is to be preferred. Assessment is purely a subjective thing. The Committee is mindful that the Ombudsman was assisted in his opinion by the opinion of an independent medical practitioner retained subsequent to the receipt of the complaint for the purpose of reviewing the Board's file, etc.

The Committee must have regard to the experience of The Workmen's Compensation Board in assessing claims of this type. In the circumstances, the Committee is of the opinion it is reasonable for The Workmen's Compensation Board to prefer the assessment of the disability made by its staff rather than an independent medical practitioner of limited experience in assessing disabilities for Workmen's Compensation purposes.

The Committee should not be taken by any means that it will always disregard an opinion obtained by the Ombudsman from an expert respecting some aspect of a decision, recommendation, act or omission of a governmental organization. In this case, however, we are not dealing with medical opinions as such but judgments on the proportion of a person's disability to be covered by Workmen's Compensation benefits. For the reasons stated above, the Committee must accept the position of the Board. Accordingly, it does not support the recommendation of the Ombudsman.

(8) Complaint #82 (pages 261-264)

As the Committee was about to consider this complaint in detail, members of the Ombudsman's office and members of The Workmen's Compensation Board advised that upon further discussions between them, the Board had agreed to reconsider the recommendation made by the Ombudsman in this case on the basis of evidence brought to the Board's attention of which it was not previously aware. The Ombudsman's office and the Board also agreed to have discussions respecting a certain policy of the Board which may have an effect on the Board's further response to the Ombudsman's recommendation.

Accordingly, the Committee deferred consideration of the complaint pending the Board's reconsideration and discussions with the Ombudsman's office. The Committee, however, recommends that The Workmen's Compensation Board advise the Committee forthwith of its further response to the Ombudsman's recommendation as soon as it is made to the Ombudsman and thereafter the Ombudsman advise the Committee whether in his opinion that further response is adequate and appropriate.⁽³⁹⁾

GENERAL COMMENTS

The Committee is disturbed as to the quality of the responses made by The Workmen's Compensation Board both to the Ombudsman's notice pursuant

to Section 19(3) of The Ombudsman Act and to his opinion and recommendations made pursuant to Section 22(3) of The Ombudsman Act. Members of the Board appearing before the Committee asked a great number of questions of the Ombudsman's office through the Chairman which could have and should have been asked immediately upon receipt by it of the Ombudsman's Reports. These questions took a great deal of time of the Committee and no doubt would have, in some cases, led to a resolution of the matter had they been asked and had the matters raised therein been discussed with the Ombudsman and members of his staff.

The Committee recommends that the Workmen's Compensation Board or any other governmental organization should not deal at armslength with the Ombudsman and his office after receipt by it of a report pursuant to Section 22(3) which contains certain opinions and recommendations of the Ombudsman. That report should trigger discussions between the respective offices designed to resolve the outstanding issues, if at all possible. In the future, these steps should be undertaken before the matter reaches the Committee for consideration. ⁽⁴⁰⁾

PART VI

RULES FOR THE GUIDANCE OF THE OMBUDSMAN IN THE EXERCISE OF HIS FUNCTION UNDER THE OMBUDSMAN ACT

In its Third Report (pages 33-42) the Committee cited certain areas wherein it was considering general rules for the guidance of the Ombudsman in the exercise of his functions. The Committee, in that Report, invited comments from the Ombudsman and members of the Legislature on the areas it was considering for general rules.

On August 2, 1978, the Committee forwarded to each member of the Legislature a letter referring to the areas included in the Committee's Third Report and inviting members' comments.

The Committee received replies from the following members of the Legislature:

The Honourable James Snow
The Honourable Dennis R. Timbrell
The Honourable Bette Stephenson, M.D.
The Honourable Robert Welch, Q.C.
The Honourable William G. Newman
The Honourable George A. Kerr, Q.C.
The Honourable R. Roy McMurtry, Q.C.
The Honourable Lorne C. Henderson
The Honourable Rene Brunelle
The Honourable Claude Bennett
The Honourable Doug Wiseman
The Honourable John E. Stokes, Speaker
The Honourable John R. Rhodes (deceased)
John P. MacBeth, Q.C., M.P.P.
Terry D. Jones, M.P.P.
Stuart Smith, M.P.P.
Robert Mackenzie, M.P.P.

The Committee regrets that more private members from the Government side and the two opposition caucuses did not respond to the Committee's letter. Responses from those members would have afforded the Committee with a more representative assessment of the views of its colleagues in the Legislature.

The members who responded to the Committee's letter generally supported the formulation of general rules for the guidance of the Ombudsman in the exercise of his functions, at this time. With one or two exceptions, they agreed that the areas specified by the Committee in its Third Report required general rules.

The Committee, before it reviewed the matter of general rules with the Ombudsman in person, settled upon a more comprehensive list of areas

wherein general rules may be considered. This list is attached to this report as Schedule "I".

The Ombudsman advised the Committee that, in his opinion, the majority of areas considered by the Committee either did not require general rules or were more properly the subject matter of legislative amendment, the latter which he believes is beyond the authority of this Committee to consider. The Committee is of the opinion however, that any consideration of general rules for the guidance of the Ombudsman should not be subsumed in any consideration of legislative amendments to The Ombudsman Act. The Committee is further of the opinion that some of the areas listed in Schedule "I" require the immediate formulation of general rules in any event of amendment to The Ombudsman Act. The Committee accordingly has recommended the formulation of general rules in certain areas. It will, with the benefit of the views of the members of the Assembly as will be expressed during the debate of this Report, formulate the general rules and submit them for the adoption of the Assembly.

The rules set forth here are those of immediate import that arose during the course of our deliberations and initiate the rule-making process.

(A) AREAS WHICH REQUIRE IMMEDIATE FORMULATION OF GENERAL RULES FOR THE GUIDANCE OF THE OMBUDSMAN IN THE EXERCISE OF HIS FUNCTIONS UNDER THE OMBUDSMAN ACT

(1) Governmental Organizations

The Committee is of the opinion that it is in the best interests of the Ombudsman and all governmental organizations concerned that a rule be formulated listing all ministries, commissions, boards, administrative units of the Government of Ontario, and any agency thereof which are within the jurisdiction of the Ombudsman to investigate. The Committee recognizes that the preparation and completion of such a list will require the collective efforts of

the Ombudsman's office, the Government and this Committee. Accordingly, it recommends that the Ombudsman's office, the Ministry of the Attorney General, and this Committee confer forthwith to prepare and settle upon a list of governmental organizations under the jurisdiction of the Ombudsman.⁽⁴¹⁾ The Committee further recommends that upon the creation of any new commission, board, administrative unit of the Government of Ontario or any agency thereof, the matter of its inclusion as part of the list be forthwith referred to this Committee for consideration and report to the Legislature.⁽⁴²⁾

(2) Annual Report

At the present time, a workable, convenient and efficient process has developed wherein the Ombudsman tables semi-annual reports within approximately two months of the close of the reporting period in question. The tabling of these reports (and their referral to this Committee for consideration) now coincides with the Committee's ability to hold hearings, in either the Christmas or summer recess.

The Committee does not wish to require the Ombudsman to report on a semi-annual basis if he considers it better to do otherwise. However, the Committee is of the opinion that the Ombudsman should be required to table his annual report with the speaker within a specific period of time after the close of the reporting period. This will ensure that relative immediate action can be taken in consequence of any matters contained in the report requiring legislative and committee attention. It will also enable all those concerned who may be affected by the report (representatives of governmental organizations, members of the Select Committee and their staff, and representatives of the office of the Ombudsman) to better order their affairs respecting the consideration of that report. Accordingly, the Committee recommends that a general rule be

formulated to require the Ombudsman, no later than three months after the close of the reporting period, to table his annual or semi-annual report, as the case may be, with the speaker of the Legislative Assembly.⁽⁴³⁾

(3) Confidentiality

Section 13(1) of The Ombudsman Act provides that the Ombudsman will not, except for the purpose of making a report under the Act in order to establish grounds for conclusions and recommendations, disclose any information received by him as Ombudsman. The Ombudsman believes the provisions respecting confidentiality in this section are too onerous and inflexible. The Committee learned on at least two occasions that the Ombudsman and members of his staff have disclosed certain information to third parties and have acknowledged at least that they have committed a technical breach of this section.

Whether or not the confidential provisions of the section are too onerous and whether or not they impede the ability of the Ombudsman's office to carry out necessary Ombudsman functions, will be discussed at such time as legislative amendments to The Ombudsman Act are considered. In the meantime, however, and in any event of legislative amendment, the Committee is of the opinion that whatever obligation of confidentiality is imposed on the Ombudsman by The Ombudsman Act, it should be strictly adhered to.

The Ombudsman advised the Committee that he would not like to see his staff fettered in such a way that it would make it impossible for them to express on-the-spot comments during the course of an investigation to representatives of the governmental organization about things that they find to be wrong. He believes that a staff with that ability makes for more effective Ombudsmanship and perhaps assists in more on-the-spot resolution of a lot of complaints. The Committee does not agree with the Ombudsman that members

of his staff should have the authority or should be instructed to express to any representative of the governmental organization their personal opinions respecting the decision, recommendation, act or omission which is being investigated. In the Committee's opinion, there is no room in the Ombudsman process other than that provided in Section 19 of The Ombudsman Act, for anyone, exercising powers delegated to him by the Ombudsman, expressing comments or opinions respecting the conduct being investigated. The exercise of that type of opinion or judgment is only permitted of the Ombudsman and only after the full Ombudsman process has been completed. To do otherwise would be to wrongly expose those affected by an Ombudsman's investigation to a possible denial of natural justice.

Accordingly, the Committee recommends that a general rule be formulated providing that the Ombudsman and his staff shall not except where permitted by The Ombudsman Act in carrying out functions thereunder, disclose to any third parties any information received by him or his staff as Ombudsman.⁽⁴⁴⁾ Further, the Committee also recommends that a general rule be formulated providing that a person carrying out Ombudsman functions shall not express to anyone, other than the Ombudsman or his authorized delegate, his or her opinion, recommendation or other similar comments respecting the decision, recommendation, act or omission purported to have been committed by or on behalf of the governmental organization in question or respecting anything else arising out of the investigation of the complaint by the Ombudsman and his office.⁽⁴⁵⁾

(4) The Ombudsman's "Monitoring Procedure"

The Ombudsman informed the Committee that this is a necessary and important function of his office particularly in the area of correctional and psychiatric institutions. He is of the opinion that it would be unwise to

formulate a rule in this area which might unduly restrict the members of his staff in this activity.

The Committee agrees with the Ombudsman that in the two areas mentioned, and perhaps in others, this particular activity has proven useful. However, it should not be used as an investigative tool upon which the Ombudsman would make recommendations to the governmental organization in question or would comment upon the conduct of representatives of that governmental organization.

Perhaps the Committee's concern is caused by the description of this activity. Monitoring connotes constant supervision by the Ombudsman's office respecting the conduct of governmental organizations. This was never intended by the Legislature and is in this Committee's opinion, beyond the scope and powers of the Ombudsman. However, the Committee supports any activity of the office wherein regular and continuous attendances by the Ombudsman's staff are made to correctional and psychiatric institutions. Where, during the course of those attendances, information comes to the attention of the Ombudsman's representative that is in the nature of a complaint or is subject matter of an investigation by the Ombudsman on his own motion, the provisions of The Ombudsman Act must be adhered to. The activity, however, should not be used for the purpose of presenting to the governmental organization in question on a semi-regular or any other basis a report card on how it has performed in the opinion of the Ombudsman and his staff. Accordingly, this Committee recommends that a general rule be formulated wherein the monitoring procedures of the Ombudsman are limited to attendance by the Ombudsman or his staff to governmental organizations for the purpose of performing one or more of the Ombudsman's functions under The Ombudsman Act. (46)

(5) Preliminary Investigations

This procedure is in some ways similar to that of the Ombudsman's monitoring system. The Committee remains of the opinion that this procedure should be strictly limited in its scope and effect. Accordingly, the Committee recommends that a general rule be formulated whereby preliminary investigations by the Ombudsman's office are limited to cases wherein further information is required by the Ombudsman either to confirm a complaint or wherein immediate assistance of a complainant is required and the circumstances of the complaint make the procedural requirements of The Ombudsman Act impossible. Once the substance of the complaint has been confirmed by the Ombudsman's office or where the immediate disposition of the matter is neither possible nor advisable, the requirements of The Ombudsman Act must be followed. (47)

(6) Notice to Governmental Organization or Person Pursuant to Section 19(3) of The Ombudsman Act

This is perhaps the most difficult Section of The Ombudsman Act to interpret and implement. This is partly due to the apparent inconsistency in meaning between the words "adversely affect" and "adverse report or recommendation". However, the purpose of the Section is clear; to afford the Ombudsman with an opportunity to make his investigation, before formulating opinions, as complete as possible and to afford those who may be affected by his opinions and recommendations an opportunity to provide him with all relevant information before those opinions and recommendations are settled. The Committee agrees with the Ombudsman that there may be circumstances wherein the application of this Section interpreted in a strict way, may be onerous and may prolong and extend the investigations. However, the other extreme – giving such notices to a minimum of persons – may have the effect of

implicating directly or indirectly persons in the Ombudsman's final report, without having given those persons who are capable of identification, certainly within the governmental organization, an opportunity to be heard. This can be a denial of natural justice.

Accordingly, the Committee recommends that a general rule be formulated to provide that whenever there may be sufficient grounds for the Ombudsman to make a report or recommendation under Section 22(3) of The Ombudsman Act, which has the effect of altering, opposing or causing the original decision, recommendation, act or omission to be changed in any way, the Ombudsman has an obligation to give the governmental organization and any person who is identified or is capable of being identified and who may have made or contributed to the decision, recommendation, act or omission, an opportunity to make representations.⁽⁴⁸⁾

(7) Opinion and Recommendations Pursuant to Section 22 of The Ombudsman Act

The Ombudsman advised the Committee that notwithstanding his views that a report with opinions and recommendations pursuant to Section 22 of The Ombudsman Act was not required within the strict wording of the Section, his office is now complying with the Committee's recommendations and comments as found in its Second and Third Reports. The Committee remains of the view that it is critical, especially in the context of the steps available to the Ombudsman pursuant to Sections 22(4) and 22(5) of The Ombudsman Act, to ensure that all opinions formulated by him and contained in a report to a governmental organization be in the strict wording of Section 22(1). Further, any recommendations made by the Ombudsman in consequence of his opinions must be in accordance with the wording of Section 22(3). Accordingly, the Committee

recommends that a general rule be formulated providing that all reports of the Ombudsman made to governmental organizations in accordance with Section 22 of The Ombudsman Act contain opinions in the wording of Section 22(1) and recommendations within the wording of Section 22(3).⁽⁴⁹⁾

(8) Procedure of Ombudsman Where Response by Governmental Organization to a Recommendation in a Report is Considered by the Ombudsman not to be Adequate and Appropriate

The Committee and the Ombudsman differ as to the interpretation of the procedure to be followed by the Ombudsman under Sections 22(4) and 22(5). The Committee on the one hand, is of the opinion that where a recommendation has been "denied" by a governmental organization and the Ombudsman wishes ultimately to have the Legislature support and implement his recommendation in some way, he must first refer the matter to the Premier and thereafter if necessary, to the Legislature and this Committee.

The Ombudsman on the other hand, by interpretation of Sections 22 and 12 of The Ombudsman Act, is of the opinion that where a recommendation has been "denied", he has the election of proceeding to the Premier or directly to the Legislature and this Committee by the vehicle of an Annual Report.

The Committee is of the opinion that one reason for this difference of interpretation is the use by the Ombudsman of his semi-annual reports to include reports of cases wherein recommendations have been denied. In ordinary circumstances, and certainly in other jurisdictions wherein this procedure is contained in the legislation, an Ombudsman would refer the matter of a denied recommendation to the Legislature by way of special report. In that case, there is no doubt that the Ombudsman is required to refer the matter to the Premier if he wishes ultimately to have the matter placed before the Assembly. In the Committee's opinion, this duty is not changed in any way because the

Ombudsman chooses to report the particular recommendations denied through the vehicle of his Annual Report.

Accordingly, the Committee recommends that a general rule be formulated to require the Ombudsman in all cases where he has concluded that a response by a governmental organization to a report made by him pursuant to Section 22(3) of The Ombudsman Act is neither adequate nor appropriate, and where he wishes ultimately, if the matter cannot be resolved, to seek support for his recommendation in the Legislature, to refer the report to the Premier in accordance with Section 22(4).⁽⁵⁰⁾

GENERAL

The Ombudsman suggested that the Committee may consider rules in the area of translation services available to the public within the Ombudsman's office and some requirement that his staff have the capacity to serve members of the public in the various languages spoken in the Province. The Committee concurs with the Ombudsman's suggestion that these are two areas wherein the facilities of the Ombudsman's office should be refined and expanded. It does not, however, consider that they are appropriate in the area of general rules.

PART VII

AMENDMENTS TO THE OMBUDSMAN ACT

The Ombudsman referred the Committee to a number of substantial amendments which, having regard to the experience of his office within the first three years, were considered to be necessary. The Committee is of the opinion that a number of the suggestions for amendment made by the Ombudsman are necessary. For example, Section 19(3) of The Ombudsman Act must be reworded

to provide for a consistency of meaning between the phrase "adversely affected" and the phrase "adverse report or recommendation". Additionally, the requirement of confidentiality imposed on the Ombudsman by Section 13 may be inconsistent with his obligation to give notice to the governmental organization concerned pursuant to Section 19, and his ability to either prosecute or assist in the prosecution of offences under Section 28 of The Ombudsman Act.

The Committee does not intend to review the matter of legislative amendments in any more detail in this Report. Rather, the Committee has suggested to the Ombudsman that he incorporate his suggested amendments in the form of a report which should be tabled with the Speaker of the Assembly with a request that the Speaker refer it to the appropriate persons for consideration and implementation.

The Committee recommends that the Speaker when he receives from the Ombudsman the report of suggested legislative amendments, refer the report to this Committee for consideration and report to the Legislature.⁽⁵¹⁾ The Committee perceives its role to be that of providing assistance to the Attorney General in respect of all necessary and appropriate amendments. It is not this Committee's purpose to be unduly legalistic where this office is concerned. Still, for the better preservation and protection of this office itself, and to save unnecessary criticism and resort to judicial construction, there are areas where strict adherence to precise wording to the legislation is necessary.

PART VIII

EXPANSION OF ORDER OF REFERENCE OF THE SELECT COMMITTEE

On June 19, 1978, the Board of Internal Economy agreed that:

"the Chairman of the Ombudsman's Committee be invited to attend meetings of the Board of Internal Economy to observe the preliminary examination by the Board in establishing the Ombudsman's estimates and that these estimates be sent to the House with the recommendation that they be referred to the Ombudsman's Committee for review."

The Committee considered this decision by the Board of Internal Economy and directed the Chairman of the Committee to write to the Speaker accepting the Board's invitation to observe future preliminary examinations by the Board in establishing the Ombudsman's estimates on the condition that the Chairman's observations of the Board's examination of the estimates be made on behalf of the Committee which may be fully discussed with the Committee members during subsequent Committee proceedings.

The Speaker responded to the Chairman's letter confirming that in accepting an invitation by the Board to observe the preliminary examination of the Ombudsman's estimates, the Chairman would be doing so as an observer only, and would be free to discuss his observations with members of the Committee.

The benefit to be derived from the Chairman's attendances at the Board of Internal Economy's meetings will only be realized if the Legislature amends the Committee's Order of Reference providing for it to receive and consider the estimates of the Ombudsman as they become available from the Board of Internal Economy and to report thereon as the Committee considers appropriate to the Legislature. Accordingly, the Committee recommends that its Order of Reference be amended to provide that the Committee receive and consider all estimates and supplementary estimates of the Ombudsman for

consideration and reporting thereon to the Legislature with such recommendations as the Committee deems appropriate.⁽⁵²⁾

PART IX

FUNCTION OF THE SELECT COMMITTEE ON THE OMBUDSMAN

To discuss the function of this Committee on a continuing basis, one must review the brief history of its workings.

The Committee was created by Order of Reference in July of 1976, initially to afford the Ombudsman with an ability, if he chose to exercise it, to have his report on his investigation of the North Pickering matter considered by members of the Legislature during the summer recess, to avoid a delay until the Fall of 1976.

The Committee's authority was not limited to reporting to the Legislature on the positions as it were, of the Ombudsman and the Minister of Housing, and thereafter report to the Legislature that the recommendations made by the Ombudsman in the report be totally implemented. Rather, the Committee had the authority to consider the report and to report thereafter to the Legislature with such recommendations as the Committee deemed appropriate.

Pursuant to its Order of Reference, the Committee participated in an apparent resolution of the impasse which existed between the Ombudsman and the then Minister of Housing in the form of an agreement dated the 1st of October, 1976. That agreement avoided a detailed review by the Committee of the issues contained in the Ombudsman's report and substituted therefor a means, which

was thought at the time, would afford a full and thorough inquiry and resolution of the outstanding issues for all concerned.

The Committee in its First Report to the Legislature, recited the circumstances of the October 1st agreement and declined to make any further comments or recommendations to the Legislature respecting the Ombudsman's report.

On the 12th day of July, 1977, the Order of Reference of the Select Committee was expanded to permit it as it deemed necessary in accordance with Section 16(1) of The Ombudsman Act to formulate from time to time general rules for the guidance of the Ombudsman in the exercise of his function under The Ombudsman Act. With that expanded Order of Reference, the Committee has received, considered and reported to the Legislature in respect of the Second, Third and Fourth Report of the Ombudsman. Additionally, because of a perceived need to become informed of the workings of Ombudsmen operations in comparable jurisdictions, the Committee visited Denmark, Sweden, Israel, England and Scotland, in January of 1978. The Committee's findings and conclusions reached as a result of that trip are contained in its Fourth Report to the Legislature.

The Committee has consistently held the view that it could not fulfill its responsibility to the Legislature if, when considering reports of the Ombudsman, it did not review in detail the organization and operation of the Ombudsman's office. By so doing, and of necessity, a careful examination of how the Ombudsman and his staff performed Ombudsman functions in specific cases was undertaken. Where the Committee was of the opinion that the Ombudsman or his staff did not comply with the requirements of The Ombudsman Act, it so stated and so reported to the Legislature.

All those affected by the Ombudsman's functions are entitled to know what standard is expected of them by the Ombudsman. Likewise, the Ombudsman and his office are entitled to know what standard will be expected of them in the performance of their duties under The Ombudsman Act. To require any lesser standard of performance of the Ombudsman and his office than that of the governmental organization, is contrary to the Committee's view of the concept of an Ombudsman in our system of government. In fact, the standard of performance of the Ombudsman's office should be higher.

This Committee is of the opinion that the most effective Ombudsman is one who performs the required functions under The Ombudsman Act on behalf of the people of Ontario in total compliance with the legislation and without ambiguity or uncertainty surrounding the meaning and intent of Ombudsman opinions and recommendations. The Committee perceives its function, on a continuous basis, to assist the Ombudsman and its staff to attain and maintain that high level of performance by discussing with them areas wherein improvement may be in order.

It has been suggested that the Committee should not comment on areas where it perceives improvement in the performance of Ombudsman functions is necessary. Rather that should be left to the governmental organizations to raise in specific instances, which the Committee would then address comment to.

In the Committee's opinion, that is an ad hoc way of assisting in the development of an Ombudsman office which has the utmost confidence of the Legislature, this Committee, the governmental organizations and the people of the Province of Ontario. It places a burden on the governmental organization which was never intended by the Legislature. It renders meaningless the Committee's terms of reference.

During discussions with the Ombudsman's staff some question arose as to the position of the Ombudsman in respect of a report and recommendation denied by a governmental organization, which had been referred to this Committee for consideration. The Committee concurs with the Ombudsman's office's opinion that once a matter is before the Committee, the Committee has jurisdiction to consider it and to make any recommendation to the Legislature which it deems appropriate in the circumstances.

However, the Ombudsman should not take the position that he has "lost jurisdiction" in any sense. The complainant in question should always be able to look to the Ombudsman for assistance and relief in accordance with The Ombudsman Act, even though the matter is before the Committee and even when the matter is before the Legislature for debate.

When a governmental organization takes further action in consequence of an Ombudsman's recommendation, even after the procedure of Sections 22(4) and 22(5) have been completed, the Committee can really only look to the Ombudsman for assistance and advice as to whether, in the circumstances, the further action is adequate and appropriate within the meaning of Section 22(4). Where, in the Ombudsman's opinion, such further actions are adequate and appropriate, the Committee would be substantially persuaded by that fact. The Committee would only in exceptional circumstances disregard an Ombudsman's opinion of the adequacy and appropriateness of the actions.

When the representatives of The Workmen's Compensation Board appeared before the Committee, the Committee was invited to articulate what it perceived its role to be in the context of a recommendation reported by the Ombudsman to the Legislature which has been denied by a governmental organization. The Committee should set out for the benefit of all governmental

organizations and the Ombudsman, what it perceives to be the appropriate manner of proceeding in the consideration of such a complaint before coming to a decision as to whether the Ombudsman's recommendation can be supported.

The Committee, in its Third Report to the Legislature, stated that:

"this Committee will, when the circumstances warrant, give full support to a recommendation made by the Ombudsman and rejected by a governmental organization.

However, the Committee in those situations will require that the Ombudsman has, in every respect, carried out the necessary provisions of the statute. To do less would be to expose the Ombudsman to criticism and might undermine the confidence which the public must have in his office.".

Accordingly, the Committee will review with the office of the Ombudsman all phases of the Ombudsman's functions which were exercised in the particular complaint. It will also examine with the governmental organization in question the adequacy and appropriateness of its response. If that response has been less than complete and if the exchange between the Ombudsman and the governmental organization contemplated by Section 22 of The Ombudsman Act has been less than thorough, the Committee will inquire into as much detail as it considers necessary in the circumstances.

When it appears to the Committee that the Ombudsman has complied with the provisions of the legislation and where the governmental organization's response is not adequate, appropriate or reasonable to the Committee, it will *prima facie* support the Ombudsman's recommendation. When the Ombudsman was created in Ontario, the Legislature intended that a vehicle for the scrutiny

of decisions of the public service would ultimately press the Legislature to redress the consequences of certain decisions considered by him to be warranted, within the context of The Ombudsman Act. If the Committee chose not to support a recommendation of the Ombudsman after it had satisfied itself as set out above, it would seriously undermine the effectiveness and credibility of the Ombudsman in the eyes of the people of the Province of Ontario and the members of the public service.

If governmental organizations wish to persuade the Ombudsman and the Legislature that their response to a recommendation is adequate and appropriate, they should do so at the level of exchanges with the Ombudsman pursuant to Section 19(3) of The Ombudsman Act and Section 22(4). Their responses at that time should be thorough, exhaustive and convincing; not short, terse and poorly prepared.

PART X

COMMUNICATIONS FROM MEMBERS OF THE PUBLIC

In recent months the Committee has received a number of requests from members of the public for permission to appear before it in person. The reasons for the requests have been related to the operation of the Ombudsman's office in a specific instance or respecting some suggested amendment to The Ombudsman Act.

The Committee has always received written communications from the public. It will continue to receive any written communication from the public that is made on the basis that the Committee will receive it without any

restriction as to the Committee's ability to make the communication, if it so decides, part of its public proceedings.

The Committee has decided that it will in appropriate circumstances hear from members of the public in person when, in the Committee's opinion, it will assist it in the formulation of general rules for the guidance of the Ombudsman in the exercise of his functions under The Ombudsman Act, or which may otherwise, in the Committee's opinion, assist it in reporting to the Legislature in accordance with its terms of reference.

SCHEDULE "A"

CLAIMS SERVICES DIVISION

ADVERSE DECISIONS - DEFINITION

An adverse decision is one which is contrary to an employee's claim for compensation or an employer's stated position regarding such claim and includes an objection by an employee or employer to any decision made by the Claims Adjudication Branch.

a) Examples of adverse decisions:

- i) A claim for compensation has been made but does not meet the requirements of the Workmen's Compensation Act such as, the accident did not arise out of employment or the accident did not occur in the course of employment, and, therefore, cannot be accepted.
- ii) A claim has been accepted for injury to one part of the body. Later, disability develops in another part of the body which the worker claims is a result of the accident. If a relationship between the second disability and the accident cannot be established, entitlement cannot be granted for the second disability.
- iii) When a claim is reopened it is necessary to establish a relationship between the original accident and the present disability. The Claims Services Division attempts to establish such a relationship. If information obtained does not support such a relationship further entitlement cannot be granted.

b) Examples of objections to decisions made by the Claims Adjudication Branch

- i) The earnings on which compensation is based.
- ii) The level of permanent partial disability.
- iii) The amount of financial relief granted to the employer by application of the Second Injury and Enhancement Fund.
- iv) The entitlement to total rather than partial disability benefits under Sections 39, 41 and 42 of the Act.

Note: Objections may be received from an employee or an employer in items i), ii) and iv).

Wm. R. Kerr
August 22nd, 1978
cw


Wm. R. Kerr
Executive Director, Claims Service
Division

VOCATIONAL REHABILITATION DIVISION

ADVERSE DECISIONS - DEFINITION

An adverse decision is one which is contrary to an employee's request for commutation of pension or other vocational rehabilitation measure or stated position regarding such measure and may include an objection by an employee or employer to any decision made by the Vocational Rehabilitation Division.

a) Examples of adverse decisions:

- i) An application for commutation is made but does not meet the criteria of the Vocational Rehabilitation Division in that it is not considered a sound rehabilitation measure.
- ii) A request for training of a specific type is made and maintained notwithstanding counselling, work tests or indications of poor employment prospects which are negative in nature.
- iii) Travel allowance is sought which is deemed inappropriate.
- iv) Maintenance Allowance is sought beyond that indicated by normal family budget expenses.
- v) Miscellaneous items not covered by Medical Aid are sought but declined as not required rehabilitation measures.
- vi) Assistance in new job placement is sought when employee is already deemed to be satisfactorily established.

b) Examples of objections to decisions made by Vocational Rehabilitation Division

- i) The Division declines a commutation to establish a small business.
- ii) The Division does not grant an application for entry to a course of study which is considered beyond the educational capacity of the employee to master. The employee disagrees.
- iii) The employee seeks financial reimbursement for transportation while seeking employment. The Division does not make such additional provision.

Vocational Rehabilitation Division
Page 2

- iv) The employee seeks an allowance which is beyond the normal total compensation level and established family budget costs. The Division denies request.
- v) The employee desires to enhance his social status some time after establishment in an accepted position and seeks vocational rehabilitation assistance in this project. The Division considers this to exceed its normal mandate.

J. Wisnicky
August 31, 1978
aw

..... *J. Wisnicky*
Executive Director
Vocational Rehabilitation Division

M E D I C A L S E R V I C E S D I V I S I O N

ADVERSE DECISIONS - DEFINITION

An adverse decision is one which is contrary to an employee, employer, or payee's stated position regarding compensation or payment.

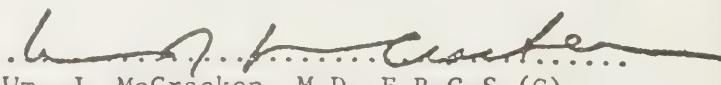
1. Examples of Adverse Decisions:

- 1.1 A claim for attendance allowance is not allowed on the basis that an injured employee is not in receipt of a 100% permanent disability award.
- 1.2 A claim for attendance allowance is not allowed on the basis that the injured employee, while in receipt of a 100% permanent disability award, is not disabled to the extent where attendance allowance is indicated.
- 1.3 A claim for attendance allowance is not increased to the next higher level, on the basis that the degree of disability is not commensurate with such degree of helplessness.
- 1.4 Payment of a drug account is not allowable on the basis that the drug prescribed was not for the purposes of treatment of the compensable disease.
- 1.5 A payee's account is dis-allowed or adjusted on the basis that such treatment was not related to the compensable injury, or such treatment is carried out without proper prior authorization, or that the amount of the account submitted does not conform with the approved WCBO schedule of payment.

2. Examples of Objection to Decisions Made by Medical Services Division:

- 2.1 The level of attendance allowance awarded.
- 2.2 The level of payment for services.
- 2.3 The non-payment for certain services.
- 2.4 The non-payment for certain travelling expenses.

WJMc/sk
August 30.1978


Wm. J. McCracken, M.D., F.R.C.S.(C),
Executive Director,
Medical Services Division.

FINANCIAL SERVICES DIVISION

ADVERSE DECISIONS - DEFINITION

The Financial Services Division does not regard decisions made in the Division as adverse. In the opinion of that Division, assessment of penalties against employers and decisions dealing with classification, experience rating and personal coverage, are not adverse to the employer because such actions are prescribed by the Statute.

However, if an employer objects to any such action taken by the Division, there is a right of appeal against the action taken and in the broad sense such action must be regarded as being adverse to the employer and therefore, an adverse decision insofar as the employer is concerned.

It should be noted that there would normally be one party, the employer, appearing on appeal.

Examples of Objections to Decisions made by the Financial Services Division

1. Additional Assessments

- a) Section 86(7) levies a demerit assessment for an employer who meets certain conditions specified in that section of the Act and the regulations of the Act. The specific section of the regulations is Section 7 of Regulation 834. An employer may object to the assessment.
- b) Section 110 makes an employer liable for an additional percentage for non-payment of his assessment on the due date. Board orders specify the amount of penalty and late payment interest charged. An employer may object to the additional assessment.
- c) Similarly, Section 111 levies a penalty on an employer by means of an additional assessment providing certain conditions relating to refusing or neglecting to file payroll information or other returns with the Board. An employer may object to the additional assessment.

2. Classification

An employer on commencing operations in Ontario reports this fact to the Board.

2.

2. Classification continued

The Financial Services Division placed the employer in a particular class. The employer objects to the classification contending that his business should fall under a different class and at a lower rate of assessment.

3. Experience Rating

An employer on commencing operations in Ontario and reporting to the Board is placed, by the Financial Services Division, in an industry group which is subject to experience rating. The employer objects on the grounds he should have been placed in a different industry group which is not subject to experience rating.

4. Personal Coverage

An employer or an officer of a company has an accident in the course of his employment and claims compensation for personal injury. The Financial Services Division rules that the employer or officer did not have personal coverage. The employer or officer contests this decision.

Prepared by G. W. Reed, Q.C., Vice-Chairman of Appeals
and

Approved by R. Brewerton, Executive Director, Financial Services Divisi

September 7, 1978.

SCHEDULE "B"

APPENDIX 'B'

GUIDELINES FOR RECOVERING OVERPAYMENTS

POLICY

Overpayments are recovered directly from the party concerned or deducted from future entitlement. The Method of payment is mutually agreed to by the employee and the Claims Adjudicator and takes into account the individual's financial situation to minimize any hardship.

PERTINENT FACTORS

1. Overpayments occur for a variety of reasons and are often the result of incorrect information submitted from outside sources. Examples are: paying benefits beyond the date entitlement ceases; duplicate payments; errors in the earnings basis or compensation rate.
2. There are various methods used to recover overpayments. The overpayment can be deducted from further benefits to be paid in the same claim from which the overpayment occurred or from a subsequent claim for the same individual. The injured employee can also refund us directly by cheque or money order.

Whatever the method of recovering the overpayment, we must be sure that we do not inflict financial hardship on the employee. We do this by means of instalment deductions, when necessary, from further benefits or instalment payments directly from the injured employee.

3. Telephone or personal contact is made with all injured employees when the overpayment exceeds \$300. We explain the cause of the overpayment and the various methods available for repayment.
4. Rehabilitation (Section 53) overpayments can be deducted from further compensation benefits, but we never deduct an overpayment of compensation benefits from rehabilitation (Section 53) benefits.
5. If incorrect information from the employer caused the overpayment it may be requested from the employer or we may take no further action, depending on the specific circumstances in the claim.
6. No interest is charged on outstanding overpayments.

RECOVERY PROCEDURES

1. We do not request overpayments under \$20.

2. A letter explaining the overpayment and requesting a refund is sent for overpayments ranging from \$20 to \$300. It is pointed out in the letter that if the injured employee cannot repay the full amount at once, then we can arrange reimbursement by instalments.
3. For overpayments from \$300 to \$1,000 telephone contact is required with the injured employee to explain the cause of the overpayment and the various methods available for reimbursement.
4. If the overpayment is in excess of \$1,000 there is a personal contact and again, the cause of the overpayment is explained and the method of repayment is discussed taking into account the individual's financial situation.
5. After contact with the injured employee by telephone or in person, when the overpayment exceeds \$300, a letter is written confirming the cause of the overpayment and the agreed method of repayment.
6. The follow-up of the initial request for the overpayment is carried out via forms or telephone, whichever is the most appropriate.
7. All overpayments exceeding \$300 that are still outstanding after the follow-up procedure are referred to the Investigations Section by memo, through the Team Co-ordinator, requesting personal contact be made with the individual to arrange repayment.

UNSUCCESSFUL RECOVERY OF OVERPAYMENTS

1. Various levels of staff, depending on the amount of the overpayment, have been designated to authorize taking no further action regarding the outstanding overpayment.
2. The Alpha Index Section, Records Branch, is informed of outstanding overpayments so that the existence of overpayments can be indicated for consideration in subsequent claims for the same individuals.
3. Outstanding overpayments remain charged to the accident employer's firm number until recovery.

TRANSFER OF OUTSTANDING OVERPAYMENTS FROM ACCIDENT COST STATEMENTS

1. Employers may request that outstanding overpayments be removed from their accident cost statements.
2. Various staff levels have been designated to authorize the transfer of outstanding overpayments from an employer's accident cost statement depending on the size of the overpayment.

Wm. R. Kerr,
Executive Director, Claims Services Division,
April 6th, 1978.

SCHEDULE "C"

ALLOWANCE FOR REPAIRS

Regulation 11(1)(f) provides that "shelter" may include an amount for the preservation, maintenance and use of the property used as a dwelling place for a recipient. The cost of approved repairs may thus be included in the shelter component of the allowance.

Regulation 25(1) provides for lump sum payments for repairs to premises used by a recipient as his residence and owned by him or a beneficiary, in addition to the allowance in the following cases:

- (a) where repairs costs are not already included under Regulation 11(1)(f) (i.e. they are already included in the shelter component) or
- (b) where minimum shelter is being paid under Section 11(2)(6) of the Regulations and the maximum allowance is being paid under Section 10.

In addition, Regulation 25(2) requires the Provincial Benefits Branch to obtain prior federal approval for any lump sum payment in excess of \$500.

In determining the method of payment use the following guidelines:

- 1) The amount between the person's actual shelter cost and the maximum allowable under FBA is referred to as the excess shelter component.

- 2) The amount between a GAINS recipient's FBA entitlement and GAINS entitlement is referred to as the excess allowance component.

GUIDELINE 1 Repairs requests under \$500

FBA - if the cost of repairs cannot be paid by using the excess shelter component over a period of 24 months or less, consider a lump sum payment. If it can be paid in this manner increase the shelter component to the maximum level for the period of time required.

GAINS - if the cost of repairs cannot be paid by using the excess shelter component plus the excess allowance component over a period of 24 months or less, consider a lump sum payment. If it can be paid by using the excess shelter plus excess allowance decline the request. Increase the shelter component to the maximum for the cost-sharing purposes.

GUIDELINE 2 Repairs requests of \$500 or more

FBA - if the client with the aid of the District Office cannot arrange for financing monthly payments equal to the monthly excess shelter component available, then consider:

- i) a partial lump sum (\$500 or less) with the balance at a monthly rate or
- ii) a lump sum payment subject to federal approval.

- GAINS - if the client with the aid of the District Office cannot arrange for financing monthly payments equal to the sum of the excess shelter component and the excess allowance component then consider:
- i) a partial lump sum (less than \$500) with the balance absorbed by the monthly excess.
 - ii) a lump sum payment subject to federal approval.

Circumstances

The following items may be considered:

- (1) Repairs to roofs, foundations, stairways, floors, porches, and verandas where the conditions may be injurious to health or safety.
- (2) The cost of a well, where there is no other acceptable water supply.
- (3) Sewers and septic tank installations when required by municipalities or health units.
- (4) Installation of bathroom facilities where inside plumbing is lacking or inadequate.
- (5) Defective wiring and furnaces.
- (6) Exterior painting when longer-term tenure in the property and need of long-term assistance are indicated.
- (7) Partitioning to afford greater privacy considering family size and composition.

- (8) Other special requests including renovations and additions required to meet unusual conditions.

GUIDELINES:

The following guidelines must be followed:

- (1) All requests are to be made in Form 80-00-208 and must include at least two estimates of the cost and the recommendation of the field worker. (In isolated areas or emergencies one estimate may suffice where the submission is endorsed in this respect by the Field Supervisor.)
- (2) Where the cost exceeds \$300, the recommendation of the Field Supervisor is required and must be included.
- (3) During the first three years of occupancy of any premises by a recipient, only the cost of emergency repairs are permissible and these, except in extraordinary circumstances approved by the Director or Assistant Director, must not exceed \$250 in any one calendar year or \$500 in total for the three year period.
- (4) Assurance should be given that the most economical method has been chosen where alternatives are available.

- (5) Submissions should contain adequate detail including reference to requirements of health or building standards authorities if applicable.
- (6) Submissions should state financial arrangements.

All requests for repairs will be referred to the Section Manager of the Provincial Benefits Branch. A decision will be made in accordance with the policy guidelines and cases eligible for lump sum payments in excess of \$500 will be referred to the Assistant Director with recommendation for further action and request for Federal Approval.

In all cases where approval is given, the Provincial Benefits Branch will advise the recipient emphasizing that liability for work contracted remains with the recipient. A copy of the letter will be directed to the appropriate District Office. Where lump sum payments are approved, the recipient will be asked to maintain contact with the field worker so that funds can be made available when required for payment.

In all cases the field worker should follow-up to ensure that the work has been done. Payment should also be verified when completing Present Condition Reports where the amount is being paid monthly. Where lump sums are paid the payment should be verified as soon as practical, considering the amount involved. A brief memo of confirmation should be sent for the Provincial Benefits file. In certain instances where the sum is large, the cheque may be sent to the District Office to facilitate proper disposition.



Ontario

SCHEDULE "D"

Ministry
of
Health

Area Planning Co-Ordinators
15 Overlea Blvd., 6th Floor
Toronto, Ontario 965-8059

August 10th, 1978

John P. Bell, Esq.,
Counsel to the Select Committee on
the Ombudsman,
Room 110, Main Parliament Building,
Queen's Park,
TORONTO, Ontario,
M7A 1A2.

Dear Mr. Bell:

Further to our recent discussions regarding Complaint #40 of the Third Report of the Ombudsman, the following information is provided for your use:

Recommendation of the Ombudsman:

All applicants should be informed well in advance of the due date for applications, of the criteria upon which the Ministry intends to rely in making the award for a nursing home, including the weight to be attached to each factor.

Minister of Health's Comment:

We have developed a procedure and evaluation criteria for assessing nursing home proposals, and I will see that all applicants are informed well in advance of the due date for applications as well as the criteria and procedures used to assess the applications.

Action Taken:

Since the date of the Minister's letter, there have only been two situations giving rise to a proposal call for additional nursing home beds. The Kent County Proposal call documents are attached as Appendix "A". The Lindsay Proposal Call followed the same procedure.

Recommendation of the Ombudsman:

Every unsuccessful candidate should be provided with written reasons as to why his proposal was rejected, based on these criteria.

Continued:

Minister of Health's Comment:

You may be assured that we will provide a written explanation to unsuccessful candidates as to why their proposals were rejected. I am sure you can appreciate that subjective criteria, such as the concern for human needs, originality and creativity and the capacity to relate to the community, might be fairly difficult, and, indeed, at times, perhaps too provocative to communicate objectively. However, I am confident that ways can be found to touch on even these points in a way that will be perceived as being helpful to the applicant.

Action Taken:

Since the date of the Minister's letter, there has only been one proposal in which letters of rejection have gone out, and the procedure outlined in the Minister's comment was not followed.

As you are aware, I have not been the Director of the Inspection Branch since September, 1977, and I cannot at this time, owing to the present Director being on vacation, reconstruct what has occurred to give rise to this situation. However, I will discuss the situation with Mr. C. Brubacher on his return from vacation and be prepared to speak to the issue at the Committee meetings.

Recommendation of the Ombudsman:

The Nursing Homes Act, 1972 be amended in order that provision be made for the successful candidate for the construction of a new home to make application for a conditional licence immediately upon the making of the award to him. The licence should be conditional upon compliance with the terms of the proposal and any subsequent stipulations imposed by the Ministry prior to the granting of an unconditional licence. It, of course, goes without saying that the licence would also be conditional upon the terms of the Act, Regulations and licence being complied with. All those sections of The Nursing Homes Act that presently apply to an applicant for a licence should also be made applicable to an applicant for a conditional licence. It is an anomaly of the present Act that neither the Ministry nor the Director appointed under the Act would, in the case of an applicant for a licence for a new home, be required to put their minds to the items set forth in Sections 4 and 5 in deciding whether a licence should be issued, until after construction was complete.

Minister of Health's Comment:

I agree with your recommendation that the successful applicant have a right to an immediate conditional licence, subject of course to compliance with the terms of the proposal and to those provisions of the legislation which relate generally to licences.

TO: John P. Bell, Esq.

PAGE: 3

Minister of Health's Comment - Continued:

I am prepared to propose a provision to that effect in an amendment to the Act. I should add that my Ministry is reviewing certain other provisions of the Act relating to licensing with a view to possible amendment, and I anticipate that the entire package will go forward at the same time.

Action Taken:

The Ministry is undertaking a substantial review of existing nursing home legislation, and this review is still in its early stages. The Minister's proposition to the Ombudsman will be included in the final version of the review, but is not part of the subject matter being reviewed at the present time.

One additional item discussed at our meeting was the close monitoring of the [REDACTED] to be built in [REDACTED]. The following is an outline of these activities to date:

- Working drawings were approved by the Nursing Home Inspection Service [REDACTED]
- The Fire Marshall's office approved drawings on November 8, 1976, and received additional drawings [REDACTED]
- Construction of the Nursing Home began approximately [REDACTED]
- A Pre-licensing Inspection took place on [REDACTED]

At that time it was determined that too many requirements existed to enable a licence to be issued. [REDACTED], a letter was forwarded to [REDACTED] by registered mail informing him all requirements should be met before a further Pre-licensing inspection took place.

- A second Pre-licensing Inspection took place and it was determined a vast majority of the requirements had been met. A single deficiency pertaining to doors remained, and in the Inspector's opinion this was not a critical issue.
- An application for a Provincial Licence was received and approved as of [REDACTED] licence number [REDACTED].

Continued:

TO: John P. Bell, Esq.

PAGE: 4

- Final approval for the plans was received from the Ontario Fire Marshall's office on [REDACTED] 1978.
- The Nursing Home was visited by the Co-ordinator, Nutritional Care, Nursing Home Inspection Service, and requirements and recommendations were suggested on [REDACTED]
- A follow-up inspection took place on [REDACTED] and it was reported that all requirements had been met.
- Menus were received by the Inspection Service from the Nursing Home, and these will be reviewed at a dietary workshop in July.

It is anticipated that this Nursing Home will continue under close supervision to ensure the maintenance of adequate operational standards.

I trust the foregoing information meets your needs.

Yours sincerely,

D. W. Corder

D. W. Corder
Executive Chairman
Area Planning Co-Ordinators

DWC:lb

Enclosure

c.c.: I. Freedman, Esq.



Ontario

- 118 -

Ministry
of
Health

Area Planning Co-ordinators
15 Overlea Blvd., 6th Floor
Toronto, Ontario, M4H 1A9
Telephone: (416) 965-8059

September 26th, 1978

John P. Bell, Esq.,
Counsel to the Select Committee on
the Ombudsman,
Room 110, Main Parliament Building,
Queen's Park,
TORONTO, Ontario,
M7A 1A2.

RECEIVED

SEP 28 1978

SELECT COMMITTEE
ON THE OMBUDSMAN

Dear Mr. Bell:

Further to my appearance before the Select Committee dealing with the Third Report of the Ombudsman, and as requested, additional information is now provided for your use.

Recommendation of the Ombudsman:

Every unsuccessful candidate should be provided with written reasons as to why his proposal was rejected, based on these criteria.

Minister of Health's Comment:

You may be assured that we will provide a written explanation to unsuccessful candidates as to why their proposals were rejected. I am sure you can appreciate that subjective criteria, such as the concern for human needs, originality and creativity and the capacity to relate to the community, might be fairly difficult, and, indeed, at times, perhaps too provocative to communicate objectively. However, I am confident that ways can be found to touch on even these points in a way that will be perceived as being helpful to the applicant.

Action Taken:

Since the date of the Minister's letter, there has only been one proposal in which letters of rejection have gone out, and the procedure outlined in the Minister's comment was not followed. This situation arose due to the newly appointed Director of the Inspection Branch being unfamiliar with the Minister of Health's correspondence with the Ombudsman.

This situation has been discussed with the Director involved, and please be assured that this issue will be addressed in any future awards of new nursing home beds.

Continued:

TO: John P. Bell, Esq.

PAGE: 2

In addition, this letter will confirm my agreement, on behalf of the Ministry of Health, to share with your Committee a copy of the final document arising out of this Ministry's substantial review of existing nursing home legislation.

Yours sincerely,

D.W.Corder

D. W. Corder
Executive Chairman
Area Planning Co-ordinators

DWC:1b

c.c.: The Honourable D.R. Timbrell
A. Maloney, Q.C.
Mr. W.A. Backley
Dr. B. Suttie
Mr. I. Freedman
Mr. C.L. Brubacher



- 120 -

SCHEDULE "E"

of the
er

Ministry of
Community and
Social
Services

416/965-2341

Hepburn Block
Queen's Park
Toronto Ontario
M7A 1E9

July 31, 1978

Dear :

I have had an opportunity to review within this Ministry, the Ombudsman's comprehensive report, which resulted from your request to the Ombudsman to investigate certain actions of this Ministry which, it was alleged, culminated in your suspension and ultimate dismissal. The Ombudsman carried out a most complete and thorough investigation and suggested that the Ministry should write to you concerning certain procedural shortcomings.

The Ministry considers it acted in good faith, never intending to expose you to any procedural defects and we regret them, but, it is our contention that you were not in any way adversely affected by them.

2/...

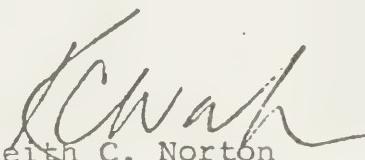
- 121 -

-- 2 --

July 31, 1978

The entire collective bargaining structure within the Ontario Public Service has changed since the passing of The Crown Employees' Collective Bargaining Act and the negotiation of a new Collective Bargaining Agreement. The procedures which are commented upon in the Ombudsman's Report and which were the subject of your complaint, are no longer a necessary requirement. I am arranging to supply the Ombudsman's office with explanatory material relating to the current procedures for your information.

Yours very truly,


Keith C. Norton
Minister
M.P.P. Kingston and the Islands

SCHEDULE "F"

GRIEVANCE PROCEDURES
under the
COLLECTIVE AGREEMENT
between
MANAGEMENT BOARD OF CABINET
and
ONTARIO PUBLIC SERVICE EMPLOYEES UNION

Feb. 1/78 - Jan. 31/79

* Article 27

- 27.1 It is the intent of this Agreement to adjust as quickly as possible any complaints or differences between the parties arising from the interpretation, application, administration or alleged contravention of this Agreement, including any question as to whether a matter is arbitrable.
- 27.2.1 An employee who believes he has a complaint or a difference shall first discuss the complaint or difference with his supervisor within twenty (20) days of first becoming aware of the complaint or difference.
- 27.2.2 If any complaint or difference is not satisfactorily settled by the supervisor within seven (7) days of the discussion, it may be processed within an additional ten (10) days in the following manner:
- 27.3.1 STAGE ONE
- The employee may file a grievance in writing with his supervisor. The supervisor shall give the grievor his decision in writing within seven (7) days of the submission of the grievance.
- 27.3.2 STAGE TWO
- If the grievance is not resolved under Stage One, the employee may submit the grievance to the Deputy Minister or his designee within seven (7) days of the date that he received the decision under Stage One. In the event that no decision in writing is received in accordance with the specified time limits in Stage One, the grievor may submit the grievance to the Deputy Minister or his designee within seven (7) days of the date that the supervisor was required to give his decision in writing in accordance with Stage One.
- 27.3.3 The Deputy Minister or his designee shall hold a meeting with the employee within fifteen (15) days of the receipt of the grievance and shall give the grievor his decision in writing within seven (7) days of the meeting.

- 27.4 If the grievor is not satisfied with the decision of the Deputy Minister or his designee or if he does not receive the decision within the specified time the grievor may apply to the Grievance Settlement Board for a hearing of the grievance within fifteen (15) days of the date he received the decision or within fifteen (15) days of the specified time limit for receiving the decision.
- 27.5 The employee, at his option, may be accompanied and represented by an employee representative at each stage of the grievance procedure.
- 27.6.1 Dismissal
Any probationary employee who is dismissed or released shall not be entitled to file a grievance.
- 27.6.2 Any employee other than a probationary employee who is dismissed shall be entitled to file a grievance at the second stage of the grievance procedure provided he does so within twenty (20) days of the date of the dismissal.

*The grievance procedures outlined in the Working Conditions Collective Agreement, Article 27, applicable to bargaining unit employees prevail over the provisions of the relevant regulations under the Public Service Act (including Section 58 of the Regulations). (Reference Section 29(3) of the Public Service Act.)



SCHEDULE "G"

Document No.	Page No.
33	02

Section ADJUDICATION

Subject:

BENEFIT OF
REASONABLE DOUBT

POLICY:

Consideration of benefit of reasonable doubt is only required where the actual evidence on the file is so evenly balanced that a clear decision for or against entitlement is not possible. So long as a definite conclusion can be reached on the evidence, benefit of reasonable doubt is not a factor.

Where a definite conclusion cannot be reached and no further evidence or information can be obtained to strengthen the case one way or the other, the balance of probabilities must be weighed and the benefit of reasonable doubt decided. The IMPLICATIONS of the information, evidence and opinions on the record are all factors. In balancing probabilities (and not mere possibilities) the "reasonable man" approach is reliable. Is it reasonable to presume that it probably was so? Would a reasonable man have acted in the manner suggested? If not, what cause is given for departure from reason? A decision is then based on which of the alternatives is the most probable or for which the inferences are strongest.

Benefit of reasonable doubt may not be applied as a substitute for evidence. If there is NO evidence or information to support a claim, benefit of reasonable doubt cannot apply.

PROCEDURE:

ACTION:

All cases involving benefit of reasonable doubt, direct to the Team Co-ordinator, by memo, with a recommendation.

Recommended by

Approved by

Date
ORIGINAL

Superseded

BENEFIT OF DOUBT

The benefit of the doubt is applied at all levels of decision-making at the Board although there is no statutory authority for this. Reasonable doubt is based on the balance of probabilities and not on mere possibilities. The justification for applying the benefit of reasonable doubt in advanced social legislation like the Workmen's Compensation Act is that such an Act must be benevolently construed.

In administrative law, the classic exposition of the benefit of the doubt means that it is not necessary for the workman to adduce conclusive proof of his right to the benefit applied for. However, the Workmen's Compensation Board adjudicating on the claim does as a matter of policy draw from all the circumstances of the case, the evidence adduced and medical opinions, all reasonable inferences and presumptions in favour of the injured workman. The benefit of the doubt concept is clearly understood and practised by all levels of adjudication in the Workmen's Compensation Board.

The injured workman does not require a preponderance of evidence in support of his claim so long as reasonable inferences can be drawn in his favour. Every reasonable consideration is accorded to those disabled or bereaved by employment in Ontario.

SCHEDULE "H"

Manuals

1. Claims Adjudication Manual
2. Claims Administrative Directives
3. Board Policies Manual - Medical Aid
4. Vocational Rehabilitation Branch Manual
5. An Outline of Rehabilitation Principles, Procedure and Service Provided
6. Organization of Vocational Rehabilitation Division

Board Policy Papers

1. Administration of Section 40
2. Formal Procedure for Development of Policy or Program or Changes in Either Requiring Corporate Board Approval
3. Policy on Appeals from Revenue Decisions
4. Revised Policy and Procedure for Administering Additional Assessments under Section 86(7) of the Act.
5. Appeals From Employees Outside of Ontario
6. Special Rehabilitation Assistance Programmes to Remove Employees from Hazards of Industrially Generated Diseases
7. Guidelines for Adjudication
 - (a) Lung Cancer - Uranium Miners
 - (b) Lung Cancer - Asbestos Workers
 - (c) Gastrointestinal Cancer - Asbestos Workers
 - (d) Vibration-Induced White Finger Disease
 - (e) Mesothelioma - Asbestos Workers
 - (f) Lung Cancer - Coke Oven Workers
 - (g) Claims for Laryngeal Cancer in Industry Related to Asbestos Exposure and Nickel Exposure

Administrative Directives

1. Guidelines for Recovering Overpayments
2. Definition of "Workmen" - Farming Operations

3. Coverage for Persons Who Own Equipment Used to Perform Their Work and Injured While Working on that Equipment
4. Reduction or Termination of Compensation Retro-actively
5. Vanier Centre for Women
6. First Response Teams
7. Simcoe Rescue Squad Inc.
8. Compensation Coverage for Off-duty Police Officers While Travelling to Court
9. Application of Section 42(7) when Permanent Disability Award and Supplement under Section 42(5) equal 100%
10. Industrial and Communicable Diseases.

SCHEDULE "I"

AREAS FOR DISCUSSION BY THE
COMMITTEE RESPECTING GENERAL RULES

1. GOVERNMENTAL ORGANIZATION - Section 1(a)
2. ANNUAL REPORT - Section 12
 - Prescribed time for reporting after close of reporting period.
 - content of detailed case summaries (p. 39, Committee's Third Report)
 - content of line summaries (p. 41, Committee's Third Report)
3. CONFIDENTIALITY - Section 13
 - Opinions of and recommendations of staff.
 - Disclosure of report to complainant pursuant to Section 23, to a third party.
 - p. 33, Committee's Third Report
4. MONITORING PROCEDURE
 - Section 15
 - p. 33-34, Committee's Third Report
5. PRELIMINARY INVESTIGATIONS
 - Section 15(2)
 - p. 35, Committee's Second Report
 - p. 34, Committee's Third Report
6. INVESTIGATION OF OMBUDSMAN ON HIS "OWN MOTION"
 - Section 15(2)
7. JURISDICTION
 - Section 15(4)
 - Time spent on non-jurisdictional complaints
 - p. 37, Committee's Second Report
8. REFUSAL TO INVESTIGATE (further or at all)
 - Sections 18(1) and 18(2)
9. NOTICE OF INTENTION TO INVESTIGATE
 - Section 19(1)
 - p. 38, Committee's Third Report

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| 10. OPPORTUNITY TO MAKE
REPRESENTATIONS RESPECTING
ADVERSE REPORT OR
RECOMMENDATIONS | - Section 19(3)
- p. 41-43, Committee's Second Report
- p. 42, Committee's Third Report |
| 11. OPINION OF OMBUDSMAN
AFTER INVESTIGATION | - Section 22(1) and (2)
- p. 40, Committee's Second Report
- p. 37, Committee's Third Report |
| 12. RECOMMENDATIONS OF
OMBUDSMAN AFTER
INVESTIGATION | - Section 22(3)
- p. 40, Committee's Second Report
- p. 37, Committee's Third Report |
| 13. INFORMAL RECOMMENDATIONS
(Suggestions) | - p. 35, Committee's Third Report |
| 14. PROCEDURE WHERE RESPONSE
TO RECOMMENDATION
CONSIDERED NOT TO BE
ADEQUATE AND APPROPRIATE | - Section 22(4) and (5)
- p. 36, Committee's Third Report |
| 15. REPORT TO COMPLAINANT | - Section 23 |
| 16. PROCEEDINGS PRIVILEGED | - Section 25 |
| 17. DELEGATION OF POWERS | - Section 27
- p. 36, Committee's Second Report |
| 18. PERSONAL CONTACT WITH
COMPLAINANTS | - p. 39, Committee's Second Report |

SCHEDULE "J"

SUMMARY OF RECOMMENDATIONS
CONTAINED IN THIS REPORT

1. The information circular or booklet as referenced by Recommendation #27 of the Committee in its Third Report be forwarded to all individuals against whom an adverse decision has been made, at the time they are notified by the Board of that decision. (Page 7)
2. For the purpose of distributing the information circular or booklet, the definition of adverse decision be expanded by the Board to include those decisions whereby the claimant obtained a result qualitatively and/or quantitatively less than was sought in the claim. (Page 7)
3. With respect to Recommendation #28 in the Committee's Third Report, concerning the future necessity of the Board's booklet "Claims Information For Employees + Employers", the Workmen's Compensation Board proceed with its revision of the document referred to in that recommendation and advise the Committee forthwith as soon as the revision has been completed. (Page 8)
4. The Workmen's Compensation Board file with this Committee the briefs which it will submit to the Commission on Freedom of Information and Individual Privacy and to the Commission of Inquiry into the Confidentiality of Health Records in the Province of Ontario, forthwith as they are presented to each of the Commissions. (Page 8)
5. The Workmen's Compensation Board review its present appeal process with a view to determining whether and to what extent it can be streamlined and

made more efficient while serving the interests of all those affected thereby.

(Page 9)

6. The Ombudsman's office on a regular basis, communicate with the complainant referred to in Complaint #135 in his Second Report with a view to providing the Workmen's Compensation Board forthwith with any new evidence coming to the office's attention which would cause the Board to reconsider the matter pursuant to Section 75 of The Workmen's Compensation Act. (Page 10)

7. The Workmen's Compensation Board schedule a hearing as soon as possible respecting the complaint referred to in Recommendations #39 and #40 of the Committee's Third Report, and thereafter advise the Committee forthwith of the results of that hearing. (Page 10)

8. Hereafter, the Workmen's Compensation Board prepare and submit responses to recommendations contained in subsequent reports of this Committee, within a reasonable period of time immediately after the tabling of the Reports in question in the Legislature. (Page 11)

9. The Financial Administration Act be amended to provide that when the Ombudsman, after all necessary and appropriate requirements of The Ombudsman Act have been adhered to, makes a recommendation to a governmental organization for the payment of a sum of money, in the absence of any other express legal authority, and when the recommendation is entirely accepted by the governmental organization, a "lawful authority" is created for such money to be paid by the governmental organization out of the Consolidated Revenue Fund. (Page 14)

10. The Ombudsman, if he has not already done so, issue instructions to all members of his staff in the substance of Recommendation #20 of the Third Report of the Select Committee. (Page 25)

11. The Ombudsman and his office table with the Committee reasons why he decided not to investigate further the issue of the miscalculation of benefits payable to workmen as found in Complaint #132 of his Second Report. (Page 25)

12. The Ombudsman, unless the complaint is received and processed by the Ombudsman pursuant to the provisions of The Ombudsman Act, not comment in any communication made to the complainant, on the conduct of a Minister or a member. (Page 28)

13. The Ministry of Community and Social Services undertake a review of its procedures respecting allowances for home repairs to ensure that all future applicants for such an allowance are made fully aware of all mandatory procedures. (Page 29)

14. The Ombudsman and his staff shall not, except where permitted by The Ombudsman Act in carrying out functions thereunder, disclose to any third parties any information received as Ombudsman by him or his staff. (Page 34)

15. With respect to Complaint #75 in the Ombudsman's Third Report, the Workmen's Compensation Board take all appropriate actions in consequence of the medical referee's report forthwith upon receipt thereof and that thereafter the Board forthwith report any actions taken in consequence thereof to the office of the Ombudsman. (Page 36)

16. The Ombudsman, within a reasonable time after he has been informed of the Board's actions re Complaint #75 subsequent to the receipt by it of the

referee's report, advise the Committee of whether, in his judgment, the said actions are adequate and appropriate within the meaning of Section 22(4) of The Ombudsman Act. (Page 36)

17. The Workmen's Compensation Board re-hear the matters contained in Complaint #77 of the Ombudsman's Third Report as quickly as possible and thereafter forthwith report its decision to the Ombudsman. (Page 37)

18. The Ombudsman, within a reasonable time after he has been informed of the Board's decision re Complaint #77, advise the Committee of whether, in his judgment, the said decision is adequate and appropriate within the meaning of Section 22(4) of The Ombudsman Act. (Page 37)

19. The Workmen's Compensation Board forthwith formulate a policy of benefit of the doubt or reasonable doubt which policy is to be applied at all levels of decision making within the Board, including the Appeal Board level. (Page 39)

20. When that policy of benefit of the doubt or reasonable doubt has been formulated and implemented, the Workmen's Compensation Board forthwith hold a hearing pursuant to Section 75 of The Workmen's Compensation Act in respect of the claim for compensation set out in Complaint #76 of the Ombudsman's Third Report. The Appeal Board panel constituted for such a hearing should consider expressly whether the policy of benefit of the doubt or reasonable doubt is appropriate to be applied in this case. In the circumstances of a request made by the employer in this case, the Committee recommends that the employer be permitted to participate in the said hearing. (Page 39)

21. The Ombudsman review the procedures of his office and take all necessary steps to reduce the average duration of a file. (Page 44)

22. Where the Ombudsman, as a result of a complete investigation of a complaint, formulates the opinion that a decision of the Rent Review Board comes within one of the sub-headings of Section 22(1) of The Ombudsman Act and he recommends that the decision be altered, varied or amended in some way in accordance with Section 22(3) of The Ombudsman Act, and where the only means available in law is an application for judicial review, the Rent Review Board, if it agrees with the Ombudsman's opinion and recommendation, should hereafter, to implement the recommendation, consent to the appropriate order in the Divisional Court which consent shall include all reasonable costs of the complainant on a solicitor and client basis. (Pages 47-48).

23. The Ministry of Consumer and Commercial Relations cause an amendment to be made to Section 13(7) of The Residential Premises Review Act by removing therefrom the phrase "within thirty days after making an order".
(Page 48)

24. The Minister of Community and Social Services cause Section 12(11) of The Family Benefits Act to be repealed and the following substituted therefor:

"The Board of Review may, on application of any party or on its own motion and with or without a hearing, reconsider and vary any decision made by it and if the Board hears from the parties to the proceedings in which the original decision was made, the provisions of this section, except subsection (4), apply mutatis mutandis to the proceedings on such reconsideration.". (Pages 51-52)

25. The Workmen's Compensation Board publish a list, for distribution to the public, of its policies, manuals and directives respecting the adjudication process within the Board at all levels. This list should describe the documentation in the same detail as contained in Schedule "H" hereto. That list shall also

contain, for the information of the public, the Board's unit cost to supply the items. (Page 55)

26. The Workmen's Compensation Board make all or any portion, as the case may be, of its policies, manuals and directives relative to the adjudication process at all levels, available to the public at the Board's actual cost. Any amendments, alterations, deletions and additions respecting the items contained in those documents shall also be made available to the public on the same cost basis. (Page 55)

27. With respect to Complaint #45 in the Ombudsman's Fourth Report, the Minister of Health implement as soon as reasonably practical, the recommendations of the Ombudsman as set out in his report dated December 16, 1977. (Page 60)

28. An Appeal Board panel of the Workmen's Compensation Board conduct a hearing forthwith for the purpose of determining whether with respect to the complainant described in Complaint #75 of the Ombudsman's Fourth Report, the 5% pension increase should, in the circumstances, be more appropriately commenced as at March, 1965. (Page 62)

29. The Workmen's Compensation Board implement the Ombudsman's recommendations made in Complaint #76 of his Fourth Report by granting the complainant entitlement to the sum necessary to purchase the commercial type heating lamp which has been previously requested. (Pages 65-66)

30. Hereafter the office of the Ombudsman and the Workmen's Compensation Board exercise a more realistic approach in the resolution of matters involving a relatively minor amount of money. (Page 66)

31. The Ombudsman forthwith obtain a medical report from the doctor in question in respect of the opinion attributed to him in the Ombudsman's report pursuant to Section 22(3) of The Ombudsman Act as contained in Complaint #77 in his Fourth Report. That report when received by the Ombudsman shall be forthwith transmitted to the Workmen's Compensation Board. (Page 68)
32. The Workmen's Compensation Board upon receipt of that medical report conduct a hearing pursuant to Section 75 of The Workmen's Compensation Act and that the Appeal Board panel presiding at the hearing consider the application of the policy of benefit of the doubt to the circumstances of this case. (Page 68)
33. Hereafter the Ombudsman ensure that any medical evidence relied upon by him in support of his opinions and recommendations be obtained in written reports which can be readily made available to the Workmen's Compensation Board. (Page 68)
34. If by the time this report is tabled in the Legislature the Workmen's Compensation Board has reconsidered Complaint #77 pursuant to Section 75 of The Workmen's Compensation Act, the Board advise the Committee and the Ombudsman of that decision as soon as it is rendered. (Page 69)
35. The Ombudsman conduct such further investigation as he deems necessary concerning Complaint #78 in his Fourth Report, of the issue of the prerequisite for supplementary benefits under Section 42(5) of The Workmen's Compensation Act, for the purpose of determining whether he can conclude the person's impairment of earning capacity is significantly greater than is usual for the nature and degree of injury. (Page 72)

36. In the event that the Ombudsman is able to form the opinion that the impairment of earning capacity is significantly greater than is usual for the nature and degree of injury, then he shall so report same to the Workmen's Compensation Board who shall, in that event, hold a hearing of the matter of Complaint #78 in the Ombudsman's Fourth Report, pursuant to Section 75 of The Workmen's Compensation Act. (Page 72)
37. The Workmen's Compensation Board implement the recommendation of the Ombudsman as set out in his report made pursuant to Section 22 of The Ombudsman Act respecting Complaint #79 in his Fourth Report. (Page 75)
38. The Workmen's Compensation Board hold a hearing pursuant to Section 75 of The Workmen's Compensation Act to reconsider the entitlement of the complainant referenced in Complaint #80 of the Ombudsman's Fourth Report, to benefits under the old Section 42(5) of The Workmen's Compensation Act. At that hearing, the Board is to specifically consider the factors of the complainant's age at the time of the injury and his ability, for whatever reason, to obtain other suitable employment between the time of the injury and age 65. (Page 78)
39. The Workmen's Compensation Board advise the Committee forthwith of its further response to the Ombudsman's recommendation made in Complaint #82 of his Fourth Report as soon as it is made to the Ombudsman, and thereafter the Ombudsman advise the Committee whether in his opinion that further response is adequate and appropriate. (Page 80)
40. The Workmen's Compensation Board or any other governmental organization, should not deal at armslength with the Ombudsman and his office

after receipt by it of a report pursuant to Section 22(3) which contains certain opinions and recommendations of the Ombudsman. That report should trigger discussions between the respective offices designed to resolve the outstanding issues if at all possible. In the future, these steps should be undertaken before the matter reaches the Committee for consideration. (Page 81)

41. The Ombudsman's office, the Ministry of the Attorney General, and this Committee confer forthwith to prepare and settle upon a list of governmental organizations under the jurisdiction of the Ombudsman. (Page 84)

42. Upon the creation of any new commission, board, administrative unit of the Government of Ontario or any agency thereof, the matter of its inclusion as part of the list be forthwith referred to this Committee for consideration and report to the Legislature. (Page 84)

43. A general rule be formulated to require the Ombudsman, no later than three months after the close of the reporting period, to table his annual or semi-annual report, as the case may be, with the Speaker of the Legislative Assembly. (Page 84-85)

44. A general rule be formulated providing that the Ombudsman and his staff shall not except where permitted by The Ombudsman Act in carrying out functions thereunder, disclose to any third parties any information received by him and his staff as Ombudsman. (Page 86)

45. A general rule be formulated providing that a person carrying out Ombudsman functions shall not express to anyone, other than the Ombudsman or his authorized delegate, his or her opinion, recommendation or other similar

comments respecting the decision, recommendation, act or omission purported to have been committed by or on behalf of the governmental organization in question or respecting anything else arising out of the investigation of the complaint by the Ombudsman and his office. (Page 86)

46. A general rule be formulated wherein the monitoring procedures of the Ombudsman are limited to attendances by the Ombudsman or his staff to governmental organizations for the purpose of performing one or more of the Ombudsman's functions under The Ombudsman Act. (Page 87)

47. A general rule be formulated whereby preliminary investigations by the Ombudsman's office are limited to cases wherein further information is required by the Ombudsman either to confirm a complaint or wherein immediate assistance of a complainant is required and the circumstances of the complaint make the procedural requirements of The Ombudsman Act impossible. Once the substance of the complaint has been confirmed by the Ombudsman's office or where the immediate disposition of the matter is neither possible nor advisable, the requirements of The Ombudsman Act must be followed. (Page 88)

48. A general rule be formulated to provide that whenever there may be sufficient grounds for the Ombudsman to make a report or recommendation under Section 22(3) of The Ombudsman Act, which has the effect of altering, opposing or causing the original decision, recommendation, act or omission to be changed in any way, the Ombudsman has an obligation to give the governmental organization and any person who is identified or is capable of being identified and who may have made or contributed to the decision, recommendation, act or omission, an opportunity to make representations. (Page 89)

49. A general rule be formulated providing that all reports of the Ombudsman made to governmental organizations in accordance with Section 22 of The Ombudsman Act contain opinions in the wording of Section 22(1) and recommendations within the wording of Section 22(3). (Page 90)

50. A general rule be formulated to require the Ombudsman in all cases where he has concluded that a response by a governmental organization to a report made by him pursuant to Section 22(3) of The Ombudsman Act is neither adequate nor appropriate, and where he wishes ultimately, if the matter cannot be resolved, to seek support for his recommendation in the Legislature, to refer the report to the Premier in accordance with Section 22(4). (Page 91)

51. The Speaker when he receives from the Ombudsman the report of suggested legislative amendments, refer that report to this Committee for consideration and reporting to the Legislature. (Page 92)

52. The Order of Reference be amended to provide that the Committee receive and consider all estimates and supplementary estimates of the Ombudsman for consideration and reporting thereon to the Legislature with such recommendations as the Committee deems appropriate. (Pages 93-94)

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